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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 175

THE INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JUNE 24, 1942.

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By Mr. Root:

Q. That is net or gross profit?

A. That is net profit. That is what we paid income tax on. On August 26, 1926, the Illinois proportional rate was raised to 10 cents per hundredweight. On January 1, 1932, this rate was reduced to 9 cents per hundredweight.

By Exam. Taylor:

Q. What is that date, the reduction took place?

A. January 1, 1932. On March 28, 1938, this rate was again raised to 9½ cents per hundredweight, this being the rate in effect now. During this period from August 26, 1926, until the late fall of 1933 we shipped all of our grain over the railroad. From that time on we have shipped the most of our grain over the waterway. During this period from August 26, 1926, until January 1, 1934, we handled an average annual bushelage of 403,454 bushels, and ran at an average annual loss of $992.60.

By Mr. Root:

Q. That again is a net loss?

A. That is a net loss. These figures were all taken from [fol. 1295] the income tax reports. Beginning with January 1, 1934, to date we have shipped the most of our grain over the Illinois Waterway and have shipped an annual average of 531,170 bushels and made an annual average profit of $5,660.83. We have never sold any grain on the local rates, that I remember of.

By Mr. Day:

Q. Still speaking of The Farmers' Square Deal Company?

A. The Farmers' Square Deal Grain Company. This is the picture of The Farmers' Square Deal. Thus you can see that by shipping on the rail over a period of eight years and trying to meet competition, we were steadily going broke. Drawing on our surplus all the time and losing an annual average bushelage of 241,703 bushels. The Waterway saved us. Not only did it save us but it put close to $20,000 per year in the pockets of our own local farmers around Morris, Illinois. Large sums of money have been spent in erecting elevators on the river. The Farm

Credit Administration of Washington, D. C. owns the elevator at Morris which the Co-operative Allied Grain Dealers' Corporation now lease and operate. A new house costing $40,000 has been built at Seneca and operated by the Co-operative Allied Grain Dealers Corporation. So far, these river elevator operators have tried to protect the local grain dealers located on the rail by giving the local grain dealer the bid for grain and letting him handle the [fol. 1296] farmer rather than bidding the farmer direct. My first chart or exhibit 45 will show that for this service the local elevator is taking one cent per bushel. I wish here to introduce exhibit No. 47, which shows the costs of handling grain direct from the farm to the markets by five different modes of transportation and the savings made to the farmer as a whole, throughout the Illinois Valley. These figures were prepared by myself and taken from actual items of expense that pertain to our business here at Morris; this is The Farmers' Square Deal. And I hereby certify that they are true and correct as far as I am able to determine. Exhibit No. 47 shows that if an elevator on the river was bidding the farmer direct, his total expense from the farm to Chicago would be 5 63/100 cents per bushel. An elevator operator on a 5¢ lake rate point trying to compete would have expenses of 6 55/100 cents per bushel, and if we are forced back to the old I. P. 9½ cent rate an elevator operator will have expenses equal to 9 8/100 cents per bushel. While a truck hauling direct will have expenses amounting to 6 50/100 cents per bushel. Corn going in by truck and lake rates sell at least one-half cent per bushel less than I. P. grain. From our own operations of trucks and barges and rail shipments, we find that the cost per ton mile to Chicago from Morris as follows—this is the Farmers' Square Deal actual expenses that are charged against it. Repeating here, from our own operations of trucks and barges and rail shipments, we find [fol. 1297] that the cost per ton per mile to Chicago from Morris is as follows: By barge at 1¾ cents per bushel our cost per ton per mile is 1.03 cents, or 62⅓ cents per ton. Cost by rail on a 5-cent Lake rate is 1.66 cents per ton mile, or $1 per ton to Chicago. On the 9½ cent Illinois Proportional rate the cost per ton per mile is 3.16 cents, or $1.90 per ton to Chicago. Operating trucks for a distance of 210,000 miles, our books show that the cost per ton per mile was 2.8 cents.

Exam. Taylor: Is that per ton, or per bushel?
The Witness: Per bushel.
Mr. Root: That 2.8 cents—read the Examiner's question.

(Question read.)

The Witness: That is, your Honor per ton per mile; 2.8 cents per ton per mile. That figures out $1.57 per ton—or $1.57 per ton to Chicago, Illinois. These are all costs to us according to our books on corn handled at Morris.
Mr. Enoch: I do not understand that statement, when you say by barge at 1¾ cents per bushel our cost per on per mile is such-and-such a figure; I do not understand The Square Deal Company ships by barge.
The Witness: Just like we know that a 5-cent rate is on the railroad, we know that that is the rate they are using against us.
[fol. 1298] By Mr. Enoch:

Q. You say then that Square Deal Grain Company gets a barge rate of 1¾ cents a bushel?
A. No; we know that is what the rate is, which is just the same as we know what the 5 cent rate is.

Mr. Root: May we go off the record.
Exam. Taylor: Off the record.

(Discussion outside of the record.)

The Witness: Exhibit No. 48 shows the loss to the producer if he is denied the right to use the cheapest form of transportation offered him here in the Illinois Valley. As president of the Co-operative Allied Grain Corporation, I know that no elevator in the state of Illinois has been denied the right to sell his grain to or become a member of the Co-operative Allied Grain Dealers Corporation. By becoming a member he enjoys the benefit of the Co-operative profit at the end of the year. If not a member he gets the full market price daily just the same as members. Competition sets the margin of profit for each dealer. It is possible for the most of this grain to go down the river to St. Louis or New Orleans instead of Chicago. In times of surplus it is an advantage to other Illinois and Iowa rail shippers to have this river grain transported cheap enough so it will sell for export and get out of the way of high freight grain that could not compete with foreign grain. Soy beans [fol. 1299] are fast becoming a major crop in Illinois and

can only be shipped on the highest rail rate unless they go by water. Audited figures submitted each year at the Farmers' Grain Dealers Convention show that the elevators of the state of Illinois have larger surpluses and less bills payable than they did 10 years ago and are handling more volume of grain. The Chicago grain market has been losing grain for years to other markets such as Decatur, Peoria, and Indianapolis, because of the strict rules and regulations of the Chicago Board of Trade.

Exam. Taylor: Have you finished exhibit 48?
The Witness: Yes.

By Exam. Taylor:

Q. There are some figures on there I would like to have explained: at the top of the exhibit, where the chart shows the black squares applying; it is between the last two, in the white space, 7.05.

A. That is a typographical error there; and we marked out 7.13 and put in 7.05; and down below we have subtracted as 7.05, instead of 7.13. The black spaces here indicate the expense items pertaining to each item of expense. The white in there denotes the savings to the producer, if he——

Q. The basic price delivered at Chicago, that is per bushel?

A. That is per bushel.

Q. All the rest of the figures are bushel?

A. All the rest are bushel, taking the 55 cents as a base price in Chicago, and subtracting off the expenses, would [fol. 1300] indicate that we would be paying to the producer if he was delivering direct to the river elevator, no rail elevator connected into it, 49.37. If he was going by the local elevator that deals with the Allied, they would take off 6.38 cents and pay the farmer 48.62 cents.

Q. The rest is the same?

A. The rest is the same, yes, just itemizing expenses, except in this item of 7 and 7.05; I have entered into that as part of the expense the ½-cent a bushel that the corn sells at a discount, that I mentioned prior to this. And the loss to the producer down there, if he has to deliver in one of these ways, is indicated by the figures. If he has to deal with the elevator based on expenses of 9.8 cents, he loses 3.45. If he deals with the rail house that is operating on

the 5-cent lake rate, he loses 1.42. If he goes direct by truck from the farm to Chicago, he loses 1.37. If he goes by the local elevators that are delivering on the river, he still sacrifices ¾ of a cent for the sake of maintaining the local elevators in the community.

Mr. Enoch: May I ask a question: what is the significance now, direct river buying here first, is that 5.63 cents up there?

The Witness: That is right.

By Mr. Enoch:

What do you claim for that figure? That is on your exhibit 48.

[fol. 1301] A. That is on exhibit 45.

Q. I am referring to the figure on exhibit 48.

A. To get what it is made up of you will have to turn back to exhibit 45.

By Exam Taylor:

Q. The details of those figures are shown on exhibit 45?

A. Yes.

Mr. Day: I do not think so. That is in the third column of figures?

The Witness: No; that is on the next to the last one.

Exam. Taylor: That can wait for cross-examination. Go ahead.

The Witness: (Continuing) I would say the call rule out of Chicago is worth $75,000 per year to the A. E. Staley Manufacturing Company of Decatur, alone. The rule making the trimming charges on barge of ⅜ cents per bushel has cost our Co-operative Allied Grain Dealers Corporation between $17,000 and $18,000 this last year. This has to be taken from the farmers price. The Chicago firm buying the corn would allow this to us if permitted to do so. If the Commissionmen of the Chicago Board of Trade wanted to help the Chicago market and farmer in general they would ask that the call rule and the trimming rule be wrote off the books and give the few men who really do deal in the real honest to goodness corn and wheat a chance to buy grain in competition with these other markets. But [fol. 1302] no, the commission man who has no investment in the Chicago Board of Trade at all except his Board of

Trade membership and a deck chair, sometimes, wants his commission legislated right into his pocket. The country grain dealer has long looked upon some of these commission men as parasites. And I define parasite as a thing that lives off of you, and you cannot get rid of it.

Mr. Brown: When did you come to that conclusion yourself?

The Witness: Quite awhile ago.

By Mr. Brown:

Q. When?

A. Quite awhile ago.

Q. When you commenced shipping by barge?

A. No, I didn't.

Q. You still ship to Chicago? I object to such language as that.

Exam. Taylor: I think perhaps you could modify that somewhat.

The Witness: Well, it is out now; I am not going to recall it.

Exam. Taylor: Well, use some other term.

Mr. Brown: If you think they are unnecessary, it is all right to say so.

Exam. Taylor: Cannot you modify that, as a necessary evil?

[fol. 1303] The Witness: Maybe that is the term; I don't know; I hope so.

Mr. Brown: If he wants to call it a necessary——

Exam. Taylor: He has accepted the modification.

The Witness: Sure.

Exam. Taylor: Proceed.

The Witness: (Continuing) When corn on the Iowa prairies was selling for 9 cents per bushel, your Chicago commission man was taking his full cent per bushel commission. The real cash grain men on the Chicago Board of Trade do not have a chance when it comes to making rules and regulations. They are outnumbered 12 to 3 by the pit traders and commission men. Cash grain is just a front for the traders who run the Board of Trade. The ratio between cash grain and futures last year was fourteen million to seven billion and fifty million bushels——

By Exam. Taylor:

Q. You are still talking about corn?

A. I am talking about the whole movement of grain now that comes into the Chicago market. This, when boiled down, there is seven billion and fifty million bushels of futures sold.

Mr. Enoch: I am interested in your answer to the Examiner's question; are you speaking about corn or all grain?

The Witness: These figures here are for all grains that come into Chicago. Please be advised, Mr. Examiner, that Mr. Farlow or his State Association does not speak for our [fol. 1304] local elevator nor for the Co-operative Allied group either, who are satisfied with the way things have been in the past few years since we found a solution for our own problems and that is water. High transportation costs are the principal, if not the only reason why the economic development of the Mississippi and Illinois Valleys have fallen behind the rest of the country. The whole purpose of the Inland Waterway development is to remove this handicap of high transportation costs.

Exam. Taylor: Does that conclude your statement?

The Witness: Yes, sir.

Mr. Root: That is all I have, your Honor.

Exam. Taylor: Any questions by counsel for protestants? Cross-examine.

Cross-examination.

Exam. Taylor: Mr. Day? Mr. Enoch?

By Mr. Enoch:

Q. What is the name of your employe with Lowell-Hoit and Company?

A. Whom are you speaking about? I haven't anybody there.

Q. Have you got an employe with Lowell-Hoit and Company?

A. Personally, no; or no other way.

Q. Did you think I was talking about your own individual employe up there?

A. Well, you said your.

Q. First, let me ask you, have you got any idea about whom I am talking now?

[fol. 1305] A. You might be talking about me, you might be talking about the co-operative, or anybody.

Q. Does that question embarrass you?

A. Not a bit.

Q. Will you tell me the man's name, the one you think I mean.

A. I want to know whom you do mean.

Q. Have you got a man there?

A. I have no employe, no.

Q. Has any one of the six or eight companies you represent, a man with Lowell-Hoit and Company?

A. No, there is nobody on our payroll there.

Q. Was Mr. Robbins in error?

A. Mr. Robbins was in error in this way: that in the office of Lowell-Hoit and Company a gentleman friend of mine there, instead of me running up there every day and getting those weights, he would get them for us and take care of us; and I sent down there at the end of the year, no arrangement made, or anything, I sent him $250. He never considered it, or didn't know we were going to pay him.

Q. Do you do that out of your own pocket?

A. Out of the Barge Company pocket, the Allied Barge Corporation.

Q. How long has that arrangement been in effect?

A. Well, the barge company has been operating since—well, we sent the first barge, I think, on December 1, 1938.

[fol. 1306] Q. How long has the arrangement been in effect?

A. There never was any arrangement. He just rather took it on himself to do that, just merely as an accommodation. There wasn't any arrangement at all.

Q. How long has the accommodation been in effect?

A. Well, ever since the Barge Company started.

Q. How many checks of $250 have you paid?

A. Just the one.

Q. Is another one due here shortly?

A. No.

Q. Did you give the name of this man?

A. No, I did not.

Q. Will you?

A. Well, I don't know as it is necessary.

Q. All right; did he formerly live in Morris?

A. No.

Q. Is there a secret about this?
A. No.

Mr. Root: Tell him who it is, Mr. Allen.
The Witness: Well, is it necessary?
Mr. Enoch: No, I don't ask it. Did he formerly live in Morris?
The Witness: No, he never did, that I know of.

By Mr. Enoch:

Q. By whom was he employed, that he had this with?
[fol. 1307] A. By the same people that employ him now.
Q. Who is that?
A. Lowell-Hoit and Company.
Q. What is the business of Lowell-Hoit and Company?
A. They are a commission firm in Chicago.
Q. Does any one of your companies have an account with him?
A. Well, Mr. Robbins with the Co-operative does quite a little business with him; and through The Farmers Square Deal Grain Company we do quite a little business with them.
Q. Do you have an account with them?
A. Well, there is no other account any more than if we should just happen to send a load of oats, or beans, or something in there, we draw a draft on them with the bill of lading attached; and as soon as the car is accounted for, that check comes back and the account is closed.
Q. Does any one of the companies that you represent hedge in the Chicago market?
A. Yes, sometimes.
Q. Do you do that extensively?
A. Never, except just maybe a few oats at harvest time, is about all.
Q. Do they handle your hedging account?
A. Most always, yes.
Q. Is the freight or barge charge physically paid in Chicago to these barge lines by any of your companies that use them.
[fol. 1308] A. I don't understand your question.
Q. Does this man that you do not name in Chicago, that represents you, have anything to do with the payment of charges for the use of barges, or towing?

A. Well, he makes up the freight bills, and gets a check that is made out to the Allied Barge Corporation, and mails it to us.

Q. Where is that made out?

A. In the office of Lowell-Hoit & Company.

Q. Does he have authority to sign your name?

A. Yes, sir.

Q. And he does sign your name to those checks?

A. Not the checks, no; my name is not on the checks.

Q. You are President of the Co-operative Grain Dealers Association?

A. Yes, sir.

Q. How are those charges handled, then?

A. Well, I think you got the cart before the horse. They are paying us, instead of——

Q. You straighten me out.

A. We are collecting the freight up there, instead of us paying them.

Q. I am talking about the shipper; where does he get his money, where does he pay his money to the barge line—The Allied Grain Corporation; is that done in Chicago, or at Morris?

[fol. 1309] A. That is done in Chicago. The man that buys a barge of corn takes out the freight, whatever you call it, and accepts the receipt for it, and the check is made out to the Allied Barge Corporation and mailed to Morris to the Allied Barge Corporation.

Q. That is all done in Chicago?

A. That is all done in Chicago.

Q. And in the office of Lowell-Hoit & Company?

A. Yes.

Q. Now, what other duties does this man have there, as far as any one of your companies are concerned?

A. It is quite convenient at times to have somebody there that will check at the elevators by telephone, to see which barge is empty, or when it is going out; or where the tow boat is, or something like that. If we want to know where 744 is, we telephone up and ask him to scout around and ask whether it has left Chicago.

By Exam. Taylor:

Q. That is the number of the barge?

A. He will find where that barge is, and telephone back and let us know.

Q. Have you got a private wire from Morris?
A. No.
Q. To Lowell-Hoit & Company?
A. No.
Q. Are you familiar with this document to which reference was made yesterday, exhibit 32, purporting to be a document surrendered here in Chicago by an outbound [fol. 1310] shipper in order to engage the proportional rate east of Chicago?
A. I am.
Q. That document purports to have your name on it; do you recall about that.

Exam. Taylor: Just for his convenience——
The Witness: You asked for the original yesterday; I have got some of them here, a couple of them.
Exam. Taylor: Here is the one that was introduced in the record. I am showing you the original that was introduced in the record as exhibit No. 32.
Mr. Root: We have copies of the original if you care to have them.
Exam. Taylor: You mean the original blank.
Mr. Root: Original blank. Oh, no, just a blank form.

By Mr. Enoch:

Q. Was the original of that document signed by you actually, or this gentleman to whom reference has been made, that is located in Lowell-Hoit & Company's office?
A. I presume that was signed by him.
Q. He has authority to sign?
A. Yes, he always puts my name and his initial behind it.
Q. He is the one that knows whether or not the charges for the transportation service are paid, isn't he?
A. Yes.

Mr. Root: You mean in the first instance—he is the one that collects the draft and forwards it to Mr. Allen. He [fol. 1311] also pays the barge line and receipts for it when the draft is delivered to him.
The Witness: Yes.

By Mr. Brown:

Q. If you are not willing to give the name of this particular man located with Lowell-Hoit & Company in Chicago, and who does you this particular service, will you state

whether or not that particular man is a member of the Chicago Board of Trade?

A. I don't know.

Q. Do I understand that he is employed solely by Lowell-Hoit & Company, with the exception of the services he does for you?

A. Well, I don't know that either; I don't know what other connections he might have.

Mr. Brown: I think we will have to press for the name of the man, in view of this strong condemnation of the Chicago Board of Receivers, and without any——

Mr. Root: If your Honor please, I fail to see any connection between the so-called condemnation Mr. Brown refers to and the man in Chicago whom Mr. Allen has authorized to sign his name.

Mr. Brown: And do clerical work, valuable services, no doubt.

Exam. Taylor: If he refuses to give his name, you cannot force it. The record will show it.

Mr. Brown: All right.

[fol. 1312] Mr. Day: We can force it, though, if we want.

By Mr. Enoch:

Q. Mr. Allen, this document now, exhibit No. 32—and I am speaking of the original; I want to be sure that its preparation was by this gentleman about which there has been some discussion in the office of Lowell-Hoit and Company in Chicago; that is right, isn't it?

A. That is right, yes.

Q. And it is prepared by him as your agent?

A. Well, now, when you say prepared by him; I don't know whether it is prepared by him or a stenographer.

Q. His direction, in the office of Lowell-Hoit and Company?

A. It is just prepared in the office there; and you could not have everybody looking after it, there has got to be somebody in particular. To tell you the truth about it, I didn't even know it had to be done when we started doing that; and the next thing I knew he was typing them out and sending them down; and then we had these printed.

Q. Made out as your agent?

A. Yes; that is, I don't know; I wouldn't say he is an agent, he just does it, that is all.

Q. Well, it has been going on for over a year, hasn't it?

A. Yes, ever since he——

Q. You have not objected to his doing it?

A. No. If he didn't do it, I would have to drive to Chicago every time. So it just saves me that trouble; that is all.

[fol. 1313] Q. You can well afford to give him a little Christmas present of $250?

A. Well, that is what I thought. He didn't even know it was coming, until I sent it to him.

Q. Exhibit 45, your statement in connection with that exhibit, as I understand is, that there is a certain saving to the farmer; and if so, that there is that saving because there is a difference in the cost of shipping via these different methods of transportation to Chicago?

A. That is right.

Q. And you assume that because one method of transportation costs less than another, that that is the saving to the famer?

A. That is right.

Q. Now, does that go through all of these exhibits?

A. Yes.

Q. You don't tell us how much you paid these farmers down here for grain, do you?

A. I can pick you out one man, if you want to, and tell you what I paid him. But your price takes care of that.

Q. If you would pick one out at the other end of the scale, I would be willing to have you do it; if you know what the average price paid by you for grain was per month, or any other period.

A. No.

Q. I mean, it is easily determined in the record.

[fol. 1314] A. The only way you could get an average is taking everything you handled, and the price you paid by the bushel, and that gives you the average; but I never went to that trouble.

Q. Do it by the week or month.

A. We don't take any average that way.

Q. You could?

A. Oh, you could.

Q. That would furnish some means of accurately determining how much the farmer gets for grain in your territory, so that we can can compare it with what farmers in other territories get.

A. I can show you one definite case, if you want it, right on the records here last month—Paul Hatcher.

Q. Any way, you have not done it for the general operations of the Co-operative Allied Grain Dealers Corporation?

A. No; these exhibits all pertain entirely to just as we function with the Farmers Square Deal. Mr. Robbins runs the business of the Allied, and I run the business of the Farmers Square Deal.

Q. Have you personally any stock in the Allied Barge Corporation?

A. Yes, sir.

Q. Have you personally any stock in the Farmers' Co-operative Grain Corporation?

A. We have got no such name as that.

Q. Oh, you are going to get technical?

[fol. 1315] A. Well, I want to know which one you are speaking about.

Q. Co-operative Allied Grain Dealers Corporation.

A. Yes, sir.

Q. You personally own stock in the Co-operative Allied Grain Dealers Corporation?

A. Yes, sir; 10 shares.

Q. Do any members of your family, are any members of your family stockholders in either one of the corporations?

A. My wife has 30 shares in the Barge Corporation.

By Exam. Taylor:

Q. The par par value of that is $100 a share?

A. That is what we paid for it; yes, sir.

Q. You did pay $100 a share?

A. Yes, sir; sold 80 acres of land to do it.

By Mr. Enoch:

Q. When you said in your statement that there was $20,000 put into the pockets of the farmers around Morris, you were basing that conclusion upon this difference in the transportation costs, solely were you not?

A. Yes, sir.

Q. How many farmers did you have in mind then?

A. Well, I wouldn't know. That was the bushels that I referred to. But I wouldn't know how many farmers it pertained to.

Q. Well, if there were 20,000 farmers, it wouldn't be so much; and if there were only one, it would be quite a lot?

A. Well, I wouldn't know on that.

By Exam. Taylor:

Q. Can you approximate it?

[fol. 1316] A. Wait until I look back here and find what I said. I said here since January 1, 1939, our firm shipped by way of the Illinois Waterways 868,235 bushels, at a saving 2.69 cents per bushel. This means that we have paid to our farmers $23,355.52 more than they would have received had we been shipping by rail on the Illinois Proportional rate. Well, now, whatever farmers were involved in that 868,000 would be the people that profited by that.

Q. And you cannot approximate it?

A. Well, that was nothing more than I might say this: we have a grain book there that has 200 sheets in it; and with a year's business of that kind, we just about fill that book. And we allow around two names to the page, probably; about 400 farmers.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. Well, there are names of others than farmers in that book, or not?

A. They would have to be either actual farmers or landlord farmers, one of the two.

Q. Wouldn't there be elevator people, or grain dealers?

A. No, we do not have anything to do with grain dealers, this Farmers' Square Deal.

Q. How long has this Farmers' Square Deal Corporation been in existence?

A. Thirty years,—thirty-one years.

[fol. 1317] Q. And on January 8th, 1914, what was it capitalized for?

A. What date was that?

Q. January 8th, 1914, which is the first date you referred to in your testimony.

A. Well, wouldn't say positive, but I think at that time there was 17,500 dollars worth of stock out.

By Mr. Root:

Q. Issued stock?
A. Issued stock.

By Mr. Day:

Q. And what is the present capitalization?
A. $17,100.

By Mr. Root:

Q. And that again is issued stock?
A. That is issued stock.

By Mr. Day:

Q. Do those figures represent the worth of the company?
A. No.
Q. Will you give the worth on January 8, 1914, and at the present time?
A. Well, I don't know as I could do that; I don't have the books here with me.
Q. Well, it has increased enormously in that period, has it not?
A. No, not a lot.
Q. Could you approximate it?
A. Well, I think—now, I am not making this as a positive statement, but I think in 1915 they probably had a sur-[fol. 1318] plus of around $20,000; and I think the surplus now is around $27,000.
Q. Does that include all of the investments the company has?
A. All investments.
Q. All assets?
A. Well, that and the capital stock.
Q. These profits that you show, or the losses,—the profits that you show for various years were distributed to the members, were they, or the stockholders?
A. Well, it is a stock company; and there have been dividends paid out of it during some years; not all years.
Q. Can you tell us what the barge route is from Morris and Seneca to the elevators to which you ship grain in Chicago?
A. Well, it is just up the river; I have never been up there; I don't know.

Q. Does this barge route run out on Lake Michigan?
A. Well, you couldn't prove it by me; I don't know.
Q. Are you connected with the Allied Barge Line?
A. Sure.
Q. But you have no familiarity at all with its operations?
A. Sure, with the operations; but not with the river; because I never went up it.
Q. Well, I am wondering how your barges get from Morris or Seneca to these elevators in South Chicago to which grain, as I understand, is customarily shipped?
A. Well, they leave going east out of Morris and go into [fol. 1319] South Chicago through what they call the Sag.
Q. It is taken through the Sag Channel, is it?
A. Taken through the Sag Channel.
Q. As I understand it, you used an arbitrary distance of 60 miles for barge, truck or rail?
A. Yes.
Q. To these elevators?
A. That is right.
Q. You have no idea, however, I think you said, as to what the actual mileage is for either method of transportation?
A. Well, just casually; we have always called it 60 miles until we hit the suburbs of Chicago.
Q. That is until you hit the Western Suburbs?
A. No, I always come in on what we call the Southwest Highway.
Q. Now, you are talking about the truck routes?
A. That is the truck route; we come in on the Southwest Highway.
Q. That is No. 7?
A. I believe so. And when we hit around in 95th Street and up in there, those suburbs, we figure we are in Chicago.
Q. And when you get to 95th and you say Western Avenue, you figure you are in Chicago; and your speedometer would show 60 miles?
A. I think so, approximately.
Q. And do you know how far you are from downtown [fol. 1320] district of Chicago, or from the South Chicago elevators when you are at 95th and Western?
A. Well, I would say just offhand around somewheres in the neighborhood of ten miles, either way.
Q. That is just a guess on your part?

A. That is just a guess.

Q. You don't know that street numbers in Chicago run 800 to the mile?

Mr. Root: North and South or east and west?

Mr. Day: 95th street is out south.

Mr. Root: You said street number; there is a difference, as I understand. The ones going west are 50.

Mr. Day: From 95th you are going north, where the numbers ordinarily run 800 to the mile; and 1600 east and west. And you do know that Western Avenue is some miles west of either State Street or west of South Chicago elevators, do you not?

The Witness: Yes, I know that.

By Mr. Day:

Q. Now, then, as I understand it, you have no information of the distances via barge to South Chicago?

A. Well, nothing more than it just angles up across the country there; just about—generally, in the same direction. That is about all, you know.

Q. Of course, the barges have to stay in the channel, do they not?

A. Sure.

[fol. 1321] Mr. Root: There is a man sitting right over here, a barge man, who can tell you just what that is, if you want to get it correct.

Mr. Day: That is all right; but this witness, of course, testified as to mileages, to earnings per mile by barge, truck, and rail. If some other witness has the information, why, of course, I won't press it with Mr. Allen; because all I want to do is get the facts here. Having put in the facts here, it seemed that Mr. Allen was the one to inquire of about them.

Mr. Root: In fact, he has stated he assumed it was 60 miles. I think it will be shown it does not vary more than three or four miles.

Mr. Day: I don't like that statement; I have had counsel say the value of bottles was a thousand dollars a car, and the Commission used that in a decision.

Exam. Taylor: That statement is not a sworn statement; the record will so show.

By Mr. Day:

Q. Now you refer to an increase on August 26, 1926,—an increase in the rate.

The Witness: Yes.

Q. Wasn't that date intended to be August 26, 1920?

A. I don't think so.

Q. You don't think so—well, who gave you this information about these rate changes?

A. That is a matter of public record.

[fol. 1322] Q. You haven't any objection to telling us where you got the information, have you?

A. I got that from a man by the name of Moore, in Mendota.

Q. And he told you that this 40 per cent increase in the rates took effect August 26th, 1936, and that the 10 per cent reduction in rates took effect——

A. January 1.

Q. January 1, 1932? You don't know that that, as a matter of fact, should have been 1922?

A. It came out of the office of the Chicago Board of Trade here.

Q. You were paying rates during all of this period June 1, 1920 and 1932, were you not?

A. I presume so.

Q. Well, you know there were no such changes there as that, don't you?

A. These are the figures I got; and that is the figures I used.

Q. But you do not use them with regard to what you actually paid during that period; you used them because somebody gave them to you and told you they were the rates on those dates; isn't that the fact?

A. Well, they were got officially. If the man in the Board of Trade office does not give out the right information, there is something wrong on that end.

Q. You mean the Chicago Board of Trade?

[fol. 1323] A. Mr. Brown's office in Mendota.

Q. I thought you said you got that from Mendota?

A. I did; he got them.

Q. He got them from Mr. Brown's office?

Mr. Brown: I will have to ask reference be given to our rate books.

By Mr. Day:

Q. You say you hauled by truck, barge and to some extent rail to Chicago?

A. You said trucks to Chicago?

Q. Yes.

A. No; we never hauled but one load in here to Chicago, in our lives.

Q. Weren't the truck costs that you testified to, and which are contained in your exhibit 45 and other exhibits, based on your actual trucking experience?

A. Sure; but I didn't say to Chicago.

Q. Oh, these are not actual truck——

A. It says operating trucks for a distance of 210,000 miles, our books show that the cost per ton mile was 2.8 cents per hundred.

Q. And that is how you arrived at this truck cost to Chicago, is it?

A. I said that would figure out on that basis, still; using 60 miles would figure out $1.57 a ton.

Q. That is how you arrive at this five cent charge for [fol. 1324] trucking shown on your exhibit 45?

A. I don't understand the question.

Q. On exhibit 45, in the fourth column of figures, you show freight to Chicago on corn via truck direct to Chicago, 5 cents?

A. Yes.

Q. Tell us how you got that figure?

A. Well, there is trucking concerns that operate down in our territory there; and that is what they charge the farmer for trucking the corn direct from his farm into South Chicago.

Q. So you did not base the cost on what your trucking cost for 200,000 miles was then?

A. That is just our truck operations; it would not make any difference whether they ran around Morris, or on the road to Chicago; it is all the same thing.

Q. Then your truck figures here are based on what certain truckers charge certain farms from farms in the vicinity of Morris to Chicago; is that right, or not?

A. Say it again.

Exam. Taylor: Read the question.

(Question read.)

Exam. Taylor: Now, Mr. Allen, if you can answer the question yes or no; and then if you want to explain it, explain it later.

The Witness: I will say yes.

[fol. 1325] By Mr. Day:

Q. Then——

A. Now, wait until I explain this: this 5 cents a bushel here comes out on the card that is sent over the territory by E. R. Bacon's man that operate- there in Morris as a buyer; and when he bids for so much, he says, 5 cents less for trucking to Chicago.

Q. That is in his bid?

A. That is in his bid.

Q. That is so far as your knowledge of trucking by Bacon goes?

A. Yes.

Q. If he pays only 2 cents a bushel, you wouldn't know anything about it?

A. No.

Q. And the fact that you truck 200,000 bushels of grain during some given period did not enter into these figures of yours at all, did they?

A. Not on exhibit 45, no.

Q. Did they elsewhere in your exhibits, or in your testimony?

A. They did in my testimony, but not in my exhibits.

Q. Was this estimated cost of the truck per ton mile based on your own truck operation?

A. That is not estimated; that is actual figures.

Q. And how does that compare with the figure you show on exhibit 45, to Chicago by truck; did you attempt to match up your cost with this so-called trucking cost?

[fol. 1326] A. No, I did not; but we have——

Q. What are the capacities——

Mr. Root: Pardon me; he was just making a statement.

The Witness: I was just going to explain that our fleet of trucks down there, that we carry a cost account for each individual truck, as to what the cost of gas and oil and depreciation, and everything that would happen to that truck, accident or anything else, repairs, cost of the driver; all that is charged to each individual truck.

By Mr. Day:

Q. How many trucks do you own?

A. Three.

Q. Do you operate three also?

A. I beg pardon?

Q. Do you operate more than three, or just the three that you own?

A. Well, for about six months this summer we had two extras hired on a weekly basis.

Q. So that for awhile you were operating five trucks?

A. Yes; but these figures here, the 210,000 miles, when we do run those trucks 70,000 miles, the three of them, it makes 210,000 miles that they traveled altogether; that was the chargeup to them on the books. And that would take in everything that they had actually cost us.

Q. Which corporation owns those trucks?

A. The Farmers' Square Deal.

[fol. 1327] Q. And where do they operate?

A. Oh, in the locality of Morris, around there. We make a trip to Chicago once in awhile, after a load of feed; or to Peoria and Bloomington; but most of the times, just right in the vicinity of Morris there, within a radius——

Q. Do they go to Decatur?

A. No, we have never been to Decatur.

Q. Rockford?

A. No.

Q. Any other points?

A. Well, Joliet, and the towns in between there; but that is just occasionally——

Q. What would they pick up in Joliet?

Mr. Root: Let the man finish his statement, please.

The Witness: Well, I don't know as we ever went over there after anything. We have sent them there to be repaired, and things like that. That is where we had them serviced.

By Mr. Day:

Q. Does the Farmers' Square Deal also handle coal, lumber?

A. No lumber.

Q. Fertilizer?

A. Yes.

Q. Drain tile?

A. No.

Q. What other things do they handle?

[fol. 1328] A. Well, we handle coal, feed, seeds, twine, fertilizer, washing machines.

Mr. Root: Fencing?

The Witness: Fencing, yes; any number of items that the farmer needs during the seasons of his operations.

By Mr. Day:

Q. And these trucks are assigned to handling those commodities, for the most part?

A. They just do everything that is necessary to the business down there to keep it going.

Q. Do you know to what extent they would haul grain?

A. Do you mean of the amount of time put in on that?

Q. Well, that would be one way of getting at it.

A. Well, I couldn't allot the time particularly; just whatever it takes in the operations, taking care of the grain part of it.

Q. But there is very slight call for use of these trucks in grain hauling, isn't there?

A. I don't know; that is our major operation.

Q. Oh, the major use of these trucks is to haul grain?

A. Is hauling grain; these others are just side lines.

Q. So that it would be fair to say that more than half their time was devoted to hauling grain?

A. I would say three-fourths of it.

Q. And in that hauling, where do they operate?

A. Well, in a radius of 15, 20 miles out of Morris, to whatever individual farm we would have to get it.

[fol. 1329] Q. They go to the farms?

A. To the farm, and then back to town.

Q. Now, what kind of trucks are these?

A. Dodge trucks.

Q. What size, ton and a half?

A. They call them ton and a half trucks; one of them is what we call a straight job, and two of them has a trailer attached behind.

Mr. Root: What class licenses?

The Witness: We have an X license which costs us $250 each for the trailer trucks; and an S license for the straight truck, which costs $75.

By Mr. Day:

Q. Is this trailer a closed job?

A. The grain box is open at the top.

Q. On the trailer?

A. On the trailer; well, in all of them, as far as that is concerned.

Q. Let us take the trailer first.

A. The trailer is open at the top, and closed all the way around.

Q. And it is suitable for handling grain, is it?

A. It is built for that purpose.

Q. What is its capacity for handling grain, for grain hauling?

A. Well, we handle just about 400 bushels on a load.

Q. 400 bushels of corn?

A. 400 bushels of corn.

[fol. 1330] Q. The other two straight jobs, what is their capacity?

A. No, there *is* two trailers, and one straight job.

Q. Is the capacity of both trailers 400 bushels?

A. Just exactly the same.

Q. They are identical trucks?

A. Identi-al trucks.

Q. Now, the straight job?

A. That is what we call a 5-ton; we haul 5 ton on it. That is what our license calls for.

Q. Is that a closed-in truck, too?

A. It is open at the top, just like the others.

Q. It is not a panel job?

A. Oh, no.

Q. And it is suitable for hauling grain?

A. For hauling grain.

Q. What is the capacity of this straight job?

A. Five ton; that is what we haul on it. It is what we call a ton and a half truck, but we——

Q. Do you mean by that that it will haul 10,000 pounds of corn?

A. 10,000 pounds of grain.

Q. Something less than 200 bushels?

A. Yes, on that.

By Exam. Taylor:

Q. Before you leave that, you said 400 bushels would be about 22,400 pounds?

[fol. 1331] A. That is right, approximate.

By Mr. Day:

Q. Do these trucks do any hauling for other people?

A. Yes, sometimes.

Q. You hire them out?

A. We have in time; not so much in the last year, because our own business has practically taken up their entire time. But then we have hauled for others.

Q. You would move household goods, for instance, if a person wanted to?

A. No, no.

Q. You do not do general hauling of that kind?

A. Grain and feeds, and seeds; and things like that, most generally.

Q. You stated that there was a difference in the commission charged on grain when it came in by barge and by rail; I think you said one-half cent in the one case, and one cent in the other?

A. That is right.

Q. Will you explain the reason for that difference?

A. I don't know the reason, but that is the rules from the Board of Trade.

Q. Now, you also referred in your testimony to the fact that at the present time elevators have much larger surplusses than they did ten years ago, and are handling more volume of grain?

[fol. 1332] A. That is right.

Q. Isn't that due to the fact that in the last two years we have had an unprecedented production of corn in Illinois?

A. Well, it might be.

Q. Well, you know we had some drought years just before 1938 and 1939, don't you?

A. Yes; but we did not have a drought ten years ago.

Q. Your comparison, then was with 1929, was it,—1929 with 1939?

A. That is right.

Q. And you say that there was a much larger surplus of grain in these elevators in Illinois, in the vicinity of Morris, than there was ten years ago; is that your testimony?

Mr. Root: Read the question again, please.

(Question read by the reporter.)

The Witness: I didn't say in Morris; I will read you what I said.

By Mr. Day:

Q. I said in the vicinity of Morris; I am trying to get at this territory tributary to your elevator.

Mr. Root: I don't understand that question.

The Witness: I don't know what is going on in the other elevators around Morris.

By Mr. Day:

Q. Well, your testimony was the elevators of the state of Illinois?

A. Sure, I said here audited figures submitted each year [fol. 1333] at the Farmers' Grain Dealers Convention show that the elevators of the state of Illinois have larger surplusses and less bills payable than they did ten years ago.

Q. Now, what do those figures actually show, 1929 versus 1939?

A. Wait a minute; they are 1930 to 1938.

Mr. Root: Wait a minute——

Mr. Day: When I asked him a few minutes ago about these intervening years, he said 10 years ago, and he made it very definite. Now, he says he wants to back up and get in this period in between——

Mr. Root: Pardon me;——

Mr. Day: The Witness said that he was not talking about this period in the last ten years, that he was comparing now with ten years ago; and that is the comparison I want him to make.

Mr. Root: May I say something, Mr. Examiner?

Exam. Taylor: All right.

Mr. Day: I think you can take him on redirect.

Mr. Belnap: Isn't Mr. Day talking about surplusses of grain, and isn't the witness talking about——

Mr. Day: May this be off the record?

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: On the record: so long as Mr. Day sticks to the witness' direct testimony, he is within his rights; and [fol. 1334] his cross-examination is proper. If anything that he brings out is different from what you think it is, then on redirect you can straighten the record out on that point. Read Mr. Day's last question.

(Question read, together with answer.)

Exam. Taylor: Now, there he has modified his previous statement.

By Mr. Day:

Q. You want to change that from 1938 to a comparison with 1930?

A. Figuring back ten years; this is 1940, and these figures from 1930, that would be ten years.

Q. Inasmuch as 1940 is only 18 days old, I do not presume you have much in 1940?

A. These figures were given at the conventions in 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, and 1938.

Q. That is what you meant when you said that the surplusses were larger now than they were ten years ago?

A. Yes; I was figuring from 1930 to 1940.

Mr. Root: What is that, again.

The Witness: I was figuring in my own mind from 1940 back to 1930, a ten-year period.

By Mr. Day:

Q. When was this Grain Dealers' Convention at which you got the 1940 figures?

A. I haven't got the 1940 figures.

Exam. Taylor: He said he had them in his mind.

[fol. 1335] Mr. Day: His testimony was audited figures.

Exam. Taylor: Mr. Day, he has straightened that out.

Mr. Day: Now, he says he got figures for 1940.

Exam. Taylor: No, he said he figured 1940 was ten years after 1930, in his head.

By Mr. Day:

Q. Well, what you have got is a comparison between 1938 and 1930?

A. That is right.

Q. Based on figures submitted at the Farmers' Grain Dealers' Convention?

A. That is right.

Q. When was that convention?

A. It is held in February each year.

Q. So that the figures you got for 1938 were obtained in February, 1939, is that right?

A. That is right.

Q. Is that right?

A. The last one is right.

Q. And that showed what surplus for the year 1938?

A. Now, this report, the way the auditor gives it there, he said fifty reports was broke down into averages, to show authentic conclusions as to the average result of operations and as to the average financial conditions existing amongst the farmer elevators of this state, shown in the diagraphs published by Harry Heiser, Public Accountant of 2005 East [fol. 1336] Taylor Street, Bloomington, Illinois. And the surplusses as he gives them here in 1930, the average surplus of fifty elevators was $12,630; in 1931, it was $11,048;——

Q. You want to give them for all these years, do you?

A. Yes.

Q. That is all right with me, but I didn't ask for them?

A. And in 1932 $6,800; in 1933 was $7,521; in 1934 was $9,513; in 1935 was $9,971; in 1936 was $17,070; in 1937 was $17,469; and in 1938 was $18,347.

Q. Now, does that mean that the average these fifty elevators had in cash were the amounts that you have stated?

A. Not in cash; that is surplus shown on their books.

Q. And that corresponds to what you gave as your surplus awhile ago?

A. Yes; it might be tied up in property, but then they are our surplus on the books; plus the capital stock, equals net worth.

Q. Yours is around $27,000 at the present time, I think you said?

A. $27,000, yes. Now, the bills payable——

Q. Now, is that what you meant by surplusses; you mean amounts in money?

A. I said that their surplusses were larger, and that their bills payable were less.

Q. What I was particularly interested in was the volume of grain.

[fol. 1337] A. Well, I will give you that, when I give you this feature: if their surplusses were larger and their bills payable were larger, it might not mean anything; but if their surplusses are larger and their bills payable are smaller, it would show that they are progressing and making headway. Take back in 1930, notes payable was $12,940; in 1931, it was $9,580; in 1932, was $8,190; in 1933, was $7,229; in 1934, was $6,007; in 1935, was $5,571; in 1936, was $4,343; in 1937, was $4,685; and in 1938, was $5,945. Now, their average bushel turnover in 1930 was $209,480; in 1931, was $182,400; in 1932, was $261,700;——

Q. That is in money?

A. No; wait a minute. Did I say dollars?

Q. Yes.

A. You better make that, that is bushels, I am talking about,—209,480 bushels.

By Exam. Taylor:

Q. That is 1930?

A. That is 1930.

Mr. Root: Give the year and the bushels.

The Witness: 1930, is 209,480 bushels; 1931, is 182,400 bushels; 1932 is 261,700 bushels; 1933, is 254,195 bushels; 1934 was 236,821 bushels; 1933, was 208,744 bushels; 1936 was 303,157 bushels; 1937, was 262,138 bushels; and 1938, was 440,084 bushels.

By Mr. Day:

Q. Now, do you have any information as to the average [fol. 1338] price of corn during those years?

A. No, I do not.

Q. The average price in 1939 was very low, was it not?

A. In 1939 was, I think, fluctuated from about 48 cents—maybe was high at the local elevator—down to about 33 cents.

Q. And in these intervening years the price of corn on occasions had been over a dollar, hadn't it?

A. Well, if I remember right, I think in 1935 maybe, or 1934, it was up as high as $1.30.

By Exam. Taylor:

Q. Well, that price that you gave there is the market price, wasn't it,—not the price to the farmer?

A. That is the price to the farmer; yes, sir.

Q. It is?

A. Yes; but that 1935 was the effect of the drought figure.

Mr. Root: What was that figure you mentioned?

The Witness: $1.30.

Mr. Root: As the high figure?

The Witness: I think about the high; that probably was on white corn, too.

By Mr. Day:

Q. Wouldn't you say that the average price of corn during these eight years was considerably in excess of the present price?

A. Well, I wouldn't remember; no; no, I wouldn't say so down around 1932. Corn then was——

Q. I didn't mean that it was lower than the lowest figure [fol. 1339] in that period; I meant the average.

A. I guess we all remember that low price.

Q. So that the fluctuation in the price paid the farmer for corn did run in excess of a dollar a bushel, did it not?

A. Did you say the average, or the fluctuation?

Q. Fluctuation.

Mr. Root: Over what period?

Mr. Day: I am still talking about the eight-year period referred to by the witness.

The Witness: Just that one year, is the only year that I remember of that it was above a dollar.

By Mr. Day:

Q. But in that one year, which is included eight, the range was from 33 to about $1.35 or $1.36?

A. No, in that eight years you still can have 14-cent corn in there.

Q. So that the range was much more than a dollar, then?

A. No, it was much less than 33 cents.

Q. Well, the range was from 14 cents to about $1.36, wasn't it?

A. No, about $1.30.

Q. $1.30?
A. Yes.

Exam. Taylor: Well, the figures speak for themselves.

By Mr. Day:

Q. What wages do you pay your truck drivers?
A. Well, under this new wage and hour law we pay them 50 cents an hour for 42 hours, and 75 cents an hour for overtime.
[fol. 1340] Q. And what had you paid prior to the taking effect of this new law?
A. 50 cents an hour straight.
Q. For how many hours a week?
A. Just whatever they put in, with a guarantee of $20 a week.

Mr. Day: That is all.
Exam. Taylor: Mr. Cole?

By Mr. Cole:

Q. Mr. Allen, what barge companies are there that you have any connection with whatsoever?
A. Well—you mean at the present time, or the past?
Q. Well, in order to start with a base period, what barge companies are there that you at any time since you were born have had any connection with whatsoever, in the smallest or largest possible detail? I will get you to answer my questions, Mr.——
A. Well, I guess about the only barge connection ever I had was at the time we bought these barges, the Barry Barge Line, when Mr. Barry finished out his contract of 30 days. And then we made a contract with Mr. Mechling, of the A. L. Mechling.

Mr. Root: Whom do you mean by we—we made a contract?
The Witness: The Allied Barge Corporation.

By Mr. Cole:

Q. Have you finished with the statement of all that you have had any contact with?
A. That is all I have had any contact with.

Q. During the time from December 1, 1938, at which time you said that the first barge moved, what company or what barge line or what barge name was it that moved the first [fol. 1341] barge which you referred to as having moved on December 1, 1938?

A. The Barry Line Company, was the way he operated.

Q. Am I to understand that after that Barry Barge Line operated for a certain time, that then the same barge line became known as this Mechling?

A. No, not the same barge line.

Q. How did this Mechling Barge Company get into the picture; what was that?

A. Well, Mechling was running his boats up and down the river; and Mr. Barry with his one tug boat was pushing for us individual; ours was the only business he had.

Q. Barry had the tug; is that the idea?

A. That is the idea.

Q. And Barry with his tug pushed the barges of the Allied Barge Corporation?

A. That is right.

Q. And Barry with his tug pushed the barges of Mechling?

A. No.

Q. Well, now, again, where did Mechling get into the picture?

A. After our contract was up with—when we bought these barges, the first year our agreement was in our contract with Barry that any time we wanted to cancel the contract we should give him 30 days' notice.

Q. Yes.

A. And we officially gave him his 30 days' notice and told [fol. 1342] him that after 30 days—that for 30 days he could push our barges, and he would be through. And then our contract at that time began with Mr. Mechling of the Mechling Barge Company for the contract of pushing.

Q. After you quit getting pushed by Barry you began to be pushed by Mechling; is that the idea?

A. That is right.

Q. But during the whole time, whether you were pushed by Barry or pushed by Mechling, the barges belong to the Allied Barge Corporation?

A. That is right.

Q. Now, the barges that were owned by the Allied Barge Corporation were loaded with grain which belonged to what companies?

A. To the Co-operated Allied Grain Dealers' Corporation.

Q. And during the time from December 1, 1938, at which time Mr. Barry was pushing barges of the Allied Barge Corporation, down to the present time, was all of the grain that was loaded into the barges belonging to the Allied Barge Corporation owned by the Co-operated Allied Grain Dealers Corporation?

The Witness: Read it again.

(Question read.)

A. No, sir.

By Mr. Cole:

Q. Who else during that period owned the grain that was loaded into and carried up the river in the Allied Barge?

[fol. 1343] A. Well, there had been some of Finnegan's grain loaded in there.

Q. Let us say Finnegan.

A. And there has been one load of the Continental's.

Q. One load of Continental?

A. Maybe two.

Q. Now, was there much for Finnegan?

A. Oh, I imagine half a dozen times, maybe.

Q. When you hauled for Finnegan and this Continental, what arrangements were made; who made them?

A. Well, that was rather as Mr. Robbins explained to you yesterday, an exchange of accommodations of the barges, more than it was——

Q. Now, do you as a representative of a shipper, or as the representative of a barge line, or because of your interest in barge lines,—are you interested sufficiently in the rates that move grain east of Chicago so that you are familiar with the tariff matters pertaining thereto?

A. Oh, I don't know very much about the tariff to the east.

Q. Then, I understand, Mr. Allen, that your principal testimony has been concerned with the grain movement up

to Chicago, rather than its movement beyond or east of Chicago; is that correct?

A. That is right, yes.

Q. Do you know of any other arrangements or under- [fol. 1344] standings of any sort that have any bearing upon that movement east of Chicago, other than those tariff provisions which were introduced in this case by Mr. Tannehill.

The Witness: Repeat that question, will you?

(Question read by the reporter.)

The Witness: You mean the cancellation of this——

By Mr. Cole:

Q. Yes, the changes that we proposed to make in our tariffs; these were all covered by Mr. Tannehill. Do you know of there being anything else than those things that has any bearing upon that movement, or the rating of that movement, or the arrangements for handling east of Chicago, other than these things we put in here?

A. Well, the question is a little beyond me; I don't know that I can answer it.

Mr. Cole: That is all right.

Exam Taylor: Is that all?

Mr. Cole: That is all I have, yes.

Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Exam. Taylor: Come to order, gentlemen. Mr. Cole, had you finished?

Mr. Cole: I have one or two more questions, if I may, Mr. Examiner.

Exam. Taylor: Go ahead.

By Mr. Cole:

Q. Mr. Allen, when the grain gets to Chicago in the barge [fol. 1345] of the Allied Barge Company, which grain is owned by the Co-operative Allied Grain Dealers Corporation, who is it that arranges for the registration of that grain with the Transit Bureau?

A. The man that has bought the grain.

Q. And where does that grain, where does that man buy the grain?

A. Well, he buys it at—that is the point of origin; is that what you mean.

Q. I don't know; I am trying to find out now where the man buys the grain, who registers the grain with the transit bureau.

Mr. Root: You mean where title passes?

The Witness: Well, he probably buys it sitting right at the telephone in his own office, connected with the Co-operative Allied Grain Dealers Corporation at Morris.

By Mr. Cole:

Q. And under your understanding of the contract that is there made, when would the title pass to the purchaser of that grain at Morris, or at Chicago?

A. When he pays the draft attached to the bill of lading.

Q. And where does he pay the draft that is attached to the bill of lading?

A. Well, the Co-operative Allied Grain Dealers Corporation out there would take the bill of lading and attach the draft to it and draw it on the firm that bought the corn. It would be deposited in our local bank there, and it would be [fol. 1346] forwarded to a Chicago bank; and the man that bought the corn would pick it up at that bank there.

Q. Then, when that man in Chicago arranges with his bank in Chicago to pay the draft which is in Chicago, when that draft that is then in Chicago is paid in Chicago, then the man that purchased the grain owns the grain in Chicago; is that correct?

A. That is the way I would understand.

Q. Then, after that man or that interest, or company or corporation has purchased the grain in Chicago, he is the one that registers that grain with the Transit Bureau, is that correct?

A. That is right.

Q. So that the Co-operative Allied Grain Dealers' Corporation, they do not register any grain with the Transit Bureau?

A. No.

Mr. Cole: That is all.

Exam. Taylor: Mr. Bradford?

By Mr. Bradford:

Q. Mr. Allen, I would like to ask you a few questions about exhibit No. 45; in the first section of the exhibit, the first set of figures across the page, you show one cent per bushel as the cost from the farm to the local river market by truck; does that local river market mean Morris?

A. That is what I had in mind, speaking of our own——

Q. Then, if you go farther over on the page, 12 cent Il-
[fol. 1347] linois Proportional rate to Chicago, 6½ cent Lake rate to Chicago, you still show one cent; is that correct?

A. That was where they would be hauling into the rail house down there, you might say.

Q. That does not mean a haul to Morris?

A. No; that is down on—I had Wing in mind when I set this up. Wing is on a 12 cent——

Q. What is the name of that town?

A. Wing, Illinois.

Q. Then, under the column headed 3-cent rate on barge to Chicago you have 2½ cents; is that also on Wing?

A. No; that is Wing corn, but delivered to Morris by barge.

Q. What distance did you use in figuring your 2½ cents a bushel on your haul from Wing to Morris?

A. Forty miles.

Q. And what distance did you use in figuring one cent per bushel on the 12 cent Illinois Proportional rate on corn hauled to Wing?

A. Anywheres within 10 miles of Wing.

Q. On the other part where you show one cent straight across to Morris under the 9½ cent Illinois proportional, and the 5 cent lake rate, and the 3 cent barge rate, what distance did you use there?

A. Morris vicinity, which would be 10 to 15 miles.

Q. 10 to 15 miles?

[fol. 1348] A. Yes.

Q. Would that have been increased if you had gone out 40 miles, which I understand some of this grain was hauled to Morris?

A. Yes.

Q. And if it was 40 miles, would you have shown 2½ cents?

A. That is shown over here; that is what it is.

By Exam. Taylor:

Q. By over here you mean?

A. That other barge over there, alongside of the 6½ cent figures.

By Mr. Bradford:

Q. Do the truckers increase their charges by 2½ times on the ratio of their mileage, say 10 to 40 miles?

A. That is about the customary charges down there; you can get grain hauled 40 miles for 2½; but the man going out there and putting in his time,——

Q. I am asking if that is what the trucker charges?

A. That is what he charges.

Q. 2½ cents for 40 miles, and 1 cent for 15 miles?

A. That is what we would charge.

Q. That is what you would charge, or figure your cost in your own trucks?

A. That is what we would charge, or what the customary rate is down there.

Q. I would like to ask you on the next figures, local ele- [fol. 1349] vator expense, what makes the difference of a cent and a half on 9½ cent Illinois Proportional grain, and the 5 cent Lake grain, and the 3 cent barge grain, of which two are 1½ cents and one is 1 cent?

A. If we were hauling from the farm to our rail house we would have to go to the expense of handling that through our local house to the barge. If we come right straight from the farm, we go to the river elevator——

Q. Is there any difference in the expense from the farm to your rail house than from the farm to the river house?

A. Maybe a few blocks in the distance.

Q. The actual hauling would be the same, wouldn't it?

A. I have got the hauling the same.

Q. Then the 1 cent represents your elevator expense, and transferring the grain from the truck to the barge, and the other from the truck to the car?

A. No; we figure that regardless of river elevator or anything, that we have got to allow our local houses there that is on the rail, we have got to allow them a cent a bushel, or they cannot exist.

Q. And from your rail house you say you have got to allow them a cent and a half?

A. A cent and a half, because we have got a man, and the electricity, and everything.

Q. Don't you have a man and electricity in the river house?

[fol. 1350] A. That cent and a half down below, that takes care of the river house.

Q. That is what I am trying to get at; you have got river elevator expense and local elevator expense.

A. We have got them both.

Q. Why does it cost one one cent to handle grain through your house if you are moving on a 3-cent barge, and 1½ cents if you are moving on a 5-cent Lake local; I am trying to figure out where the one-half cent comes from?

A. Just difference in expense.

Q. Via truck to Chicago you have got local elevator one-quarter of a cent per bushel; what does that mean?

A. I had in mind when I made this schedule up the way that Bacon & Company, the way he operates. He has a local man in that community, that spends his entire time running around to buy grain. Now, he cannot maintain that man out in that country even at a quarter of a cent; but that is what I put in there.

Q. Does that represent any expense putting this grain through an elevator?

A. Just buying expense, just the same as this up here is buying at a local elevator.

Q. I would like to refer to the second column from the left hand side of the page, the 5 cent Lake rate to Chicago, and ask you where that grain goes to Chicago, if it is re-shipped by rail what rate it would pay from Chicago to New York?

[fol. 1351] You say under a 5-cent rate?

Q. Yes, if it was subsequently shipped by rail.

A. Well, I don't know.

Q. You did not, in making up this investigation, or making this investigation referred to in this exhibit—you did not try to find out?

A. All I know is hearsay; I did not look at the tariff.

Q. Assuming that that grain would have to make up the difference between the reshipping rate and the local rate from Chicago, or 8½ cents over the reshipping rate; why didn't you complete the picture and compare what it would cost to take that 5 cent lake rate to Chicago grain clear

through, the same as you did in connection with 9½ cents Illinois Proportional rates?

A. Well, we are really not interested in the grain after it hits Chicago.

Q. Why show it in one case and not the other? You are interested in one case, and not the other?

A. Well, this here has got a reshipping privilege on it.

By Exam. Taylor:

Q. Which are you talking about?

A. The 9½.

By Mr. Bradford:

Q. And the 5 cent lake rate has no reshipping privilege?

A. That is what I understand.

Q. But you know that if it is reshipped it cannot be less [fol. 1352] than the local rate from Chicago as the through rate?

A. That is what I have heard.

Q. Now, I will ask you about your Column 4, via truck direct to Chicago; what would that grain pay after it reached Chicago, if it went to New York by rail?

A. Well, that is in the same category as the 5 cent lake rate.

Q. You did not care to show what the truck rate would pay to New York, in comparison with your barge rate to New York?

A. It wouldn't make any difference whether I showed it or not; I didn't figure it went any further than that, because it is used right here in Chicago.

Q. I will ask you this: I believe you were here when Mr. Robbins testified, and also Mr. Norton; did you hear them say that one of the factors in this grain setup, and one of the reasons for the barge lines on the Illinois River was the competition of the trucks and the lake rates?

A. State that again.

Exam. Taylor: Read it.

(Question read.)

The Witness: I don't remember hearing them saying that, no.

By Mr. Bradford:

Q. Well, would you admit that that was one of the reasons?

A. Well, I think I said here in my testimony that the——

[fol. 1353] Q. You went too fast, I didn't follow you; would you mind telling me what you said about the rate via trucks to Chicago, and the lake rates to Chicago?

A. I said if we as local grain dealers in the town of Morris are forced back to the old Illinois proportional rate we cannot possibly compete with the trucks that run the highway and buy grain direct from the farmer and haul it direct from the farm to Chicago.

Q. Let us follow right from there: if the truck grain does not have a reshipping privilege, and can only move out via lake, don't you believe that you are going beyond that competition when your barge grain is permitted the reshipping rate from Chicago and the truck grain is not?

A. I don't know.

Q. You don't know?

A. No.

Q. It is a simple matter of arithmetic, isn't it?

A. I don't know that, either.

Q. I will ask you about the reshipping rates from Chicago to Central Freight Association territory: I believe you said you were familiar with the exhibit put in by the witness Tannehill as to the application of reshipping rates that they proposed to withdraw?

A. I do not believe I said that.

Q. I understood you to say it; I will ask you first, do you [fol. 1354] know whether the shipping rates ex-barge to Chicago applied to Central Freight Association territory; that is, that territory Pittsburgh and west?

A. Well, I never had any experience with it.

Q. You don't know whether they do or not?

A. I never had any experience with it.

Q. You wouldn't care to state whether they do or not?

A. I just answered, I never had any experience with it.

Q. Well, do you know? You may know, whether you had any experience or not.

A. Only from hearsay.

Q. Has anybody told you?

A. Just what I heard talked around here, is all.

Q. Has anybody ever told you, or have you heard that the

reshipping rates to Central Freight Association territory apply on barge grain.

Exam. Taylor: Mr. Bradford, apparently it would be hearsay if he did say it. We wants facts on this record.

Mr. Bradford: I know we want facts, but you cannot get any answer when you do ask him a question. All right, we will drop it. I will ask you this question: if the reshipping rates apply to Central Freight Association territory on ex-barge grain, but were limited by an application in the tariff so that in no case shall the combination through rate to and from the reshipping point be less than the local [fol. 1355] rate from Chicago, that that applies in connection with the rates to Central Freight Association territory and no such restriction to the Trunk Line territory; do you believe that that is a discrimination against the grain to Central Freight Association territory?

Mr. Root: Object to that, on the ground it asks the witness to draw a legal conclusion.

Exam. Taylor: Objection sustained.

By Mr. Bradford:

Q. I would like to ask you about Mr. Moore; I think you said he lived in Mendota. Is that Percy Moore?

A. I just know him as Moore.

Q. Is he in the grain business?

A. He is a broker over there, yes.

Q. And he furnished the figures for these exhibits?

A. Yes.

Q. Do you know the source, or the authority for his rail rates shown on the exhibit?

A. He told me he got them from M. Brown's office.

Q. Do you know whether he got them direct, by asking Mr. Brown?

A. I don't know.

Q. Do you know whether he got them out of the rate book that is put out by the Chicago Board of Trade?

A. I don't know.

Q. Do you have that rate book in your office?

A. No.

[fol. 1356] Mr. Bradford: Mr. Examiner, I am going to move that any reference to rail rates shown in exhibits 45, 46, 47, and 48 be stricken from the record, as it does not comply with the rules of practice. There is no authority

shown for the rates; based purely on some statements that somebody got from somebody else. And the rules of practice specifically provide that authority must be shown for the rates.

Mr. Root: Your Honor, may we have leave to supply the tariffs showing those to be the rates.

Exam. Taylor: If you wish to do that, comply with the rule—can you do that in the course of the hearings?

Mr. Root: I think so, your Honor.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Have you finshed, Mr. Bradford?

Mr. Bradford: I have finished.

Exam. Taylor: All right, Mr. Brown?

By Mr. Brown:

Q. Mr. Allen——

A. Yes, sir.

Q. Do you know whether the Mr. Moore you referred to is the representative at Mendota of Lowell-Hoit & Company of Chicago?

A. I understand he is.

Q. I wish now to ask a few questions in connection with your exhibits 45 to 48: I understand this exhibit pertains to the business of the Farmers' Square Deal Company.

[fol. 1357] A. That is right.

Q. If I just say Farmers' Square Deal, you will understand I am referring to that company.

A. All right.

Q. Now, on your exhibit 45, beginning at the top, the first item is cost from farm to local river market by rail?

A. Yes, sir.

Q. And down to the item that reads—prefixed by three stars—"As far as the 5-cent Lake rate and trucked corn will go; as it has no further billing; shows expense as." Now, that is the eighth item; now, will you turn to the third column of the rates it is headed via 3-plus cents barge rate to Chicago. If you follow down that column from the top to the bottom, and get down to No. 8, the total shown there is 6.38 cents per bushel; is that correct?

A. That is what it shows here, yes.

Q. Isn't that where your interest in the transportation charges on barge grain ceases?

A. That is right.

Q. So we may call that the cut-off point, so far as your interest is concerned?

A. Yes.

Q. That would also be true, of course, on the righthand part of the exhibit, the second half of it, where you used Wing, Illinois as the point of origin?

[fol. 1358] A. Yes.

Q. I will return to that later; that is, the example as to Wing. Now, as to the lefthand column showing figures using Morris, Illinois as a representative point of origin, I should like to go down that list from one to eight; the first item, cost from farm to local river market by truck, is one cent per bushel?

A. That is right.

Q. Then the next is local elevator expense, one cent per bushel.

A. Which column do you want now?

Q. The very next column, going down from 1 to 8, the second item is Local Elevator Expense, 1 cent per bushel.

A. I don't know which one you are talking about; what is the heading of it?

Q. I am using the lefthand side.

A. Which one are you going down?

Q. I am going down from 1 to 8, and using this column in here, the barge column.

A. All right.

Q. The second item there, now, is local elevator expense, 1 cent per bushel.

A. Yes.

Q. On all the grain that the Square Deal Company handles, how much of it would first go through your local elevator in Morris before it was subsequently taken over to the barge elevator?

[fol. 1359] Exam. Taylor: Designated on this exhibit, the river elevator.

Mr. Brown: Yes.

The Witness: Oh, I don't anticipate over 5 per cent.

By Mr. Brown:

Q. We may cast that item out?

A. No.

Q. Why not?

A. Because we have got to maintain the elevator, and keep a man there, and one thing and another. We use the elevator; the elevator is not obsolete.

Q. But that is your business?

A. Sure it is; this is all our business.

Q. You do avoid that expense of 95 per cent of the business.

A. No, sir.

Q. I am talking about the amount of the grain the Square Deal Company sells to the river elevator regularly for movement by barge to Chicago.

A. That does not talk about the physical elevator; that talks about the business.

Q. Talking about the barge business?

A. I mean this cent right here; we have got to have a cent a bushel to maintain our institution, not just physical elevator cost.

By Exam. Taylor:

Q. In other words, you charge it against the elevator, whether it is handled through that elevator or through [fol. 1360] the river elevator?

A. Sure; I get part of my salary out of there. If I didn't have it there, I wouldn't get it.

Exam. Taylor: I think that is clear on the record.

By Mr. Brown:

Q. I think it should go by truck from farm to river, thence barge to Chicago.

A. I do not.

Q. Very well; we disagree. That is all. Now, the next item is river elevator expense, 1½ cents a bushel; that would be the expense of the Allied Grain Dealers Corporation?

A. That is what Mr. Robbins yesterday was talking about, that makes up a part of his cost down there, yes.

Q. It is not a direct expense, though, to the Square Deal Company?

A. Well, it enters into the shipment.

Q. It enters into the transportation charges?

A. Yes.

Q. But it is not a direct charge against the Square Deal; I am asking that question for this reason: I understood from what has been said here that any grain that you might sell as the Square Deal Company to the Allied Grain Corporation is a delivered price at the River elevator?

A. That is right.

Q. Therefore, I say that should come out.

A. Well, I say it does not; I say it belongs in there.

[fol. 1361] Q. It should come out as far as the Square Deal is concerned; I am not saying it is not a proper charge or an average charge for the Allied Grain Dealers' Corporation.

A. I do not understand what you are getting at then. I thought you were just analyzing where you got this rate of 6.38.

Q. The fourth item, of river elevator trimming expense on barges, where does that trimming expense occur?

A. Here in Chicago; and it is a very unjust expense too.

Q. So that should properly read elevator trimming expense on barges at Chicago?

A. No; it originates in Chicago, but it is——

Mr. Root: The charge originates?

The Witness: The charge originates at Chicago, but it is a part of our expense.

By Mr. Brown:

Q. I am not disputing it is a charge, but I do say it is not a charge at the river elevator trimming,—trimming at the river elevator?

A. I do not care where you put it; we have put it——

Q. You mean it is in the price that you get; you yourself do not pay it as the Square Deal Corporation, do you?

A. What is that?

Q. Do you as the Square Deal Corporation pay that .38 of a cent trimming charge?

A. Sure, we do.

Q. I dispute that. The evidence heretofore has been it is [fol. 1362] .35 of a cent, instead of .38 of a cent?

A. What do your records show that it is charged in the rule book—

Q. Mr. Robbins put it in yesterday at .35; 1¾ for the transportation cost, .35 of a cent for trimming, and then .50 of a cent for weighing and inspection. Now, I am just

calling attention to the slight difference. Now, the next item, No. 5; freight to Chicago on corn 1¾ cents per bushel; that is in accordance with testimony by Mr. Robbins, and I do not question it. The sixth item is weighing and inspection charge, ¼ of a cent; where does that charge accrue?

A. Well, I will tell you where I got that;——

Q. Where does it accrue; where is the work performed for which the charge is ¼ of a cent per bushel?

A. I don't think the work ever occurs; I think you just charge it.

Mr. Brown: That is not responsive.

Exam. Taylor: Where is weighing and inspection supposed to be performed, is the question?

The Witness: Well, that is here in Chicago.

Mr. Brown: I wish the reporter to read the previous remark.

(Remark of the witness read by the reporter.)

By Mr. Brown:

Q. Now, Mr. Allen, do you know that grain cannot be sold on federal grades, or Illinois state grades, without [fol. 1363] being sampled and inspected by a licensed inspector?

A. Well, I have understood that there was an inspection bureau in Chicago, yes.

Q. You understand there is one there?

A. Yes.

Q. And it is there by reason of the federal laws, and the laws of the state of Illinois?

A. I guess that is right.

Q. And you still think it is needless?

Mr. Root: He didn't say that.

Mr. Brown: What did he say?

Mr. Root: He said he doubted whether they did or not.

Mr. Brown: He said it was not done.

The Witness: I doubt it, the inspections we get sometimes.

By Mr. Brown:

Q. You mean you doubt whether the work is actually done?

A. That is what I am getting at.

Q. Well, then, if the work is not done, do you know whether or not a certificate is issued by either the state or the federal department?

A. Sure, they will issue a certificate.

Q. I understand now that it is your charge that inspection certificates are issued by the proper authorities without actually performing the work of inspection?

A. I did not charge that.

[fol. 1364] Q. That is the inference; I will drop it.

A. I will tell you why:——

Q. No, I don't need it; you don't need to tell me anything. I didn't ask it.

Mr. Root: Mr. Examiner, hasn't he got a right to explain?

Exam. Taylor: On redirect you can bring it up.

By Mr. Brown:

Q. On this inspection, is grain inspected by the Allied Grain Dealers Corporation, that you sell and deliver to them?

A. Yes, they look it over; they take a sample out of every load.

Q. Do they issue a certificate of inspection?

A. No.

Q. As a seller to them, they do not give you a certificate of inspection, you say?

A. I guess they would, if I asked them; but I never doubted. The grades was all right.

Q. How do you know whether or not there is a discount that should be taken from you, if it should be graded as No. 2 yellow?

A. They never discounted me.

Q. Then I misunderstood Mr. Robbins.

A. I said they never discounted me; because in the last two years we had the finest grade of grain.

Q. You seem to be different from the ordinary farmer?

[fol. 1365] A. No, I don't think so.

Q. Mr. Allen, I understand that you deliver to the Allied Grain Dealers' Corporation at Morris or Seneca, Illinois grain which you bought from the farmers, had that delivered to those elevators; and you now say that you do not

get from the Allied Grain Dealers Corporation a certificate of inspection.

Mr. Root: May I inquire what he means?

Mr. Brown: Just a moment, please; he said he didn't get one, and he didn't ask for one.

The Witness: There is not a grain elevator in the entire local or country elevators anywhere that ever issue one.

By Mr. Brown:

Q. Well, if the testimony heretofore is that there is an inspection certificate issued, along with the weight, then that evidence was wrong; is that correct?

A. I don't know whether that was ever said or not.

Q. All right; now, the next item on the left hand part of the sheet is No. 7, commission in Chicago, one-half cent per bushel. Now, by whom is that commission paid?

A. Well, I suppose it is paid by the man that buys the corn.

Q. Delivered where?

A. At Chicago.

Q. So I understand the answer is that corn which is delivered by barge to a man in Chicago pays a commission of a half a cent a bushel?

A. What is that, now?

[fol. 1366] Exam. Taylor: Read the question.

(Question read by the reporter.)

By Mr. Brown:

Q. That man who takes delivery at Chicago pays half a cent a bushel commission?

A. Well, that is the way your rules are up here. He does not bid us, he bids us less the commission. He has got to protect you fellows up here, to keep you eating.

Q. Mr. Witness, I am not talking about the Board of Trade rules; you have shown here that a commission of a half a cent a bushel is paid, and I want to know who pays it, and at what place he pays it.

A. Well, I don't know; it is paid here in Chicago; zut then we did not have anything to do with the paying of it ourselves.

Q. That is the point I make: you do not, as a part of your transportation charges and all other charges from

Morris, Illinois to Chicago, pay a half a cent a bushel commission to anybody; is that right?

A. No; for the reason that if we would consign it up there using your spot market as a basis, then they take the full Chicago price and deduct the commission. If it is sold f. o. b. or c. i. f. Chicago, the bid is based then as so much less the commission; it depends on how you sell it.

Q. Yes, there is two sets of terms?

A. Yes.

Q. Let us take one at a time: I am going to take the one [fol. 1367] shown on your exhibit, commission at Chicago, one-half cent a bushel; under what kind of a sale transaction do you as shipper's representative, or Allied Grain Dealers' Corporation, pay a half cent a bushel; and to whom do you pay it?

A. Well, it enters in there with the deductions from the Chicago price, all that stuff.

Q. To whom do you pay it?

A. I didn't say we did pay it; it enters as a part of your costs.

Q. Oh, then it is figured in your cost, because in your opinion under certain rules of the Chicago Board of Trade it is required to be paid by somebody; is that it?

A. Sure, that is it.

Q. But you yourself, neither you as a shipper of the Square Deal, nor the Allied Grain Dealers' Corporation, has paid a half a cent a bushel commission at Chicago to anybody?

A. It has come out of our pocket; I don't care how you get around it. That is what you are trying to do; you do not admit you got it, do you?

Q. Did you say a little while ago that you did not pay that commission to anybody in Chicago?

A. I did not say that.

Q. Well, if you figured it in your cost, and you have not paid it directly, shouldn't it come out of your cost?

A. No. You would take everything out of there, like as [fol. 1368] if the corn would flow to Chicago for nothing, if we use your figures.

Q. I didn't put in any figures——

Mr. Enoch: I do not think the witness understands the theory upon which this exhibit has been constructed; and

we ought to have this representative of Lowell-Hoit and Company come in here.

The Witness: Let me explain to you that Lowell-Hoit and Company never had anything to do with this.

Mr. Brown: We have not got to the man taking delivery yet; we have not yet got over this kind of sale that would involve one-half cent a bushel commission, shown on your exhibit; and I want to find out, Mr. Allen, who pays that; from whose pocket does that come?

The Witness: It ultimately comes out of the farmer's pocket.

By Mr. Brown:

Q. It is in the bid that you pay to the farmer; you admit that. After that has occurred and you have sold your grain at Chicago, do you pay that out to somebody at Chicago, that you have included in your price to the farmer?

A. What is the difference whether you pay it to him or whether he makes a price less the commission; what is the difference?

Q. Mr. Allen, this is supposed to be an exhibit showing the cost.

A. Sure; and that exhibit is right, too; only you are try- [fol. 1369] ing to get around it, that is all.

Q. What is that?

A. I say that exhibit is right, and you are trying to get around it; that is all.

Mr. Brown: I object to the remark, and wish it to be stricken.

The Witness: I will withdraw it.

Exam. Taylor: I think if the witness will answer your questions, and then make his explanation, we will get ahead a lot faster.

By Mr. Brown:

Q. I will drop that for the time being, and I will take up the sale on c. i. f. terms; if grain is sold to move by barge from Morris, Illinois, to move along side of a Chicago elevator on c. i. f. terms, do you as a shipper pay a half cent commission,—pay a half cent a bushel commission to anybody in Chicago?

A. It is figured out of the price, yes.

Q. You understand, now, I am talking about c. i. f. terms, where you get a flat price for delivery at Chicago, a certain kind of grain that there is a certain period of time; is there anything in there said about commission, in your price?

A. We know every day what corn is worth in Chicago, the bid that comes out on your call bid there. And you do not have to be very smart to be able to substract half a cent a bushel off of it, to what they bid you.

[fol. 1370] Q. Well, if they bid you a flat price, we will say 58 cents on c. i. f. terms delivered to Chicago elevator, do they pay you then only 57½ cents a bushel for what was the out-turn weight of that grain?

A. No; if they bid us 58, that is what they would pay you.

Q. Now, would you know how much of the six million odd bushels of the grain that it was stated here was shipped in a certain period by the Allied Grain Dealers' Corporation, I understand from both the elevators, both Morris and Seneca, to Chicago,—are you in a position to say, as an officer of that company, how much of that grain was sold on c. i. f. terms, Chicago?

A. Well, that is Mr. Robbins' end of it; I really couldn't answer that.

Q. As an officer of the company, do you know?

A. No, I don't know.

Q. Who would know?

A. Why, Mr. Robbins would know.

Q. Will Mr. Robbins be here for sometime?

Mr. Root: It looks like two or three more days, if that is what you mean.

By Mr. Brown:

Q. If you had included soy beans in this exhibit 45, taking the first example, what figures would you have shown as the rail cost to Chicago on soy beans?

A. Well, it would have been nine and one-half times 60, instead of nine and one-half times 56; it would have been [fol. 1371] just a little bit more.

Q. In other words, it would have appeared in the first column with a slight difference, because of the four pounds difference in the weight?

A. Yes, that is right.

Q. Do you know whether there is any lower rate on oats from Morris, Illinois by rail than 9½ cents?

A. I don't think there is.

Q. Taking the righthand portion of exhibit 45, where the cost figures are shown, I mean the rail cost figures are shown as 12 cents Illinois proportional, and 6½ cents as the lake local: I believe in answer to a question by Mr. Bradford, you said Wing was representative point for that part of the exhibit?

A. That is what I had in mind, yes.

Q. If I say the local rate from Wing to Chicago is 10 cents——

A. I was thinking about the 12-cent Illinois proportional rate from Wing only. I have that here; I put that down there, that Wing had a 6½ cent rate, but I found out they had a 10. That 6½ does not specify any particular place.

Q. Well, you selected Wing, Illinois.

A. That is in regard to the first column.

Q. Now, you already said that the local rate on corn from Wing, Illinois, to Chicago is 10 cents.

A. Yes.

[fol. 1372] Q. That being the case, if we take the second column, headed 6½ cents and run down to the sixth item, the rate there would be 5.6 per bushel, instead of 3.64, would it not?

A. You say if it was done.

Q. Yes, sir.

A. Yes.

Q. Can you give for the record any point in Illinois from which the Illinois proportional rate by rail is 12 cents and the lake local rate on corn is 6½ cents?

A. Well, I am not familiar with the tariffs; I could not.

Q. Then the answer is no?

A. That is right.

Q. Exhibit 46, please: I believe, Mr. Allen, on your direct examination you said that the average shipment for the years 1934 up to 1938, inclusive, was about 531,170 bushels from the Square Deal Company?

A. What was the date you mentioned?

Q. I thought you said 1934 to 1938, inclusive?

A. I said beginning with January 1, 1934, to date; that was to December 14th, 1939.

Q. December 14th, 1939?

A. Yes.

Mr. Root: That is the date as of which these exhibits were made; you will note on the exhibit, Mr. Brown.

Mr. Brown: Oh, yes. Well, now, if you cast out the [fol. 1373] year 1939, 1,024,939 bushels, can you say offhand what would have been the average for the years 1934 to 1938, inclusive?

A. No, I have not figured it that way.

By Mr. Brown:

Q. Well, if that average of the shipments for 1934 to December 14th, 1939, was 531,170 bushels, what caused the great increase, nearly double that amount, for the year 1939?

A. Well, you can see by the short flow out in 1938, a lot of grain was held back until the next year. That made—if that red spot was pushed up, and they had all been normal, they would have been pretty much the same.

Q. Would you say that it was not largely due to the fact that you had been reaching out farther into the territory to get corn and other grain to ship by barge?

A. No; you can see it was held back. The way this one year went up, it was held back in the farmer's hand.

Q. For what period has the Square Deal Company been buying grain in the vicinity of Morris for shipment by barge?

A. Well, the barge began to operate there sometime in 1933. We did not use the barge for quite awhile; we sat there like these other fellows and tried to fight it out with the rails.

Q. Quite awhile does not answer my question; I want to know when you began buying grain for shipment via barge, the year and about the month.

A. Well, I think I figured it here in my figures, that ap- [fol. 1374] proximately January 1, 1934, was about the time that we——

Q. And I believe you said that from that time on the shipments were mostly by barge.

A. The greatest percent of it; yes, sir.

Q. And when you said that you referred to shipments of the Square Deal Grain Company?

A. Yes.

Q. Exhibit 48, please:——

Exam. Taylor: This is a good spot to quit, isn't it?

Mr. Brown: Yes.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: We will recess until 2:00 o'clock.

(At 12:30 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

[fol. 1375] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 o'clock P. M.

Exam. Taylor: All right, gentlemen, let's come to order. Are you ready to proceed, Mr. Brown?

Mr. Root: Mr. Examiner——

Exam. Taylor: Mr. Crane.

Mr. Crane: Mr. Examiner, I don't like to interrupt you but I want to enter my appearance, and if I may do it, I would be glad. Halsey McGovern and Willis Crane for the U. S. Secretary of Agriculture. We haven't determined yet whether we will put in any evidence or not, but we will probably appear on brief.

Mr. Brown: Mr. Examiner——

Mr. Root: Pardon me just a minute. Here, Mr. Examiner, is that sufficient? (Handing document to Examiner Taylor). It is the only copy Mr. Mechling happened to have in his pocket. I can get more.

Exam. Taylor: Show it to Mr. Enoch.

Mr. Root: You said that is to be in triplicate, but that is the form. Mr. Mechling happened to have one in his pocket, after they had sent the wrong one in.

Mr. Enoch: He is in the room, isn't he?

Mr. Root: Yes, right back there.

Mr. Enoch: Yes.

[fol. 1376] Mr. Root: But the Examiner asked me to put this in the record. If it meets with your approval, I will be glad to do so.

Exam. Taylor: Are you going to put Mr. Mechling on?

Mr. Root: I am not. Whether someone else will or not, I can't vouch for it.

Mr. Belnap: Yes, he will be.

Exam. Taylor: Then let him put it in at that time.

Mr. Root: Yes, just so I comply with your request, your Honor.

Exam. Taylor: That is fine. All right, Mr. Brown.

Mr. Brown: Mr. Examiner, as a courtesy to Mr. Root, I agreed to have Mr. H. S. Benson, assistant manager of the Transportation Department, Chicago Board of Trade, make up during the recess a memorandum of the interstate local rates to Chicago from Morris, Illinois, to Chicago, beginning with the date of January 8, 1914, to date. And in this memorandum, it is explained that the interstate locals to Chicago are and were also the specifics up to Chicago of the one-factor through rates from Morris, Illinois, to New York and other points in Eastern Trunk Line and New York territories.

Exam. Taylor: That is in your records or the tariffs?

Mr. Brown: The ICC tariffs are here; and before submitting this, I want to say that the 5 cent rate shown on Exhibit 46 was in effect prior to January 8, 1914. And [fol. 1377] beginning——

Exam. Taylor: Prior to January 8th?

Mr. Brown: Yes, prior to January 8, 1914, and beginning with January 8, 1914, the rate was 5½ cents. Here is the memorandum and it can be copied in the record, if you wish, and a copy retained by respondents. The memorandum also explains how the apparent error in Exhibit 46 came about.

Mr. Root: As I understand it, then, Exhibit 46 will stand as it is, as modified by those correct rates?

Mr. Brown: Yes.

Mr. Root: And those rates will correct any errors in 46 as it now appears, is that correct?

Mr. Brown: That was the understanding.

Mr. Day: Not only that, but this will also correct the testimony as to those rate changes as to which Mr. Allen testified?

Mr. Root: That is right, because his testimony was based on the same information that he had put into Exhibit 46.

Mr. Brown: I think Mr. Bradford ought to see it before it is copied on the record.

Mr. Bradford: Let me see it.

Mr. Enoch: Off the record——

Mr. Brown: I think I ought to say, Mr. Bradford, that Mr. Root and I agreed in your absence that if we showed

these rates from Morris, Illinois, which covers the left side [fol. 1378] of Exhibit 46, that ought to be sufficient.

Mr. Bradford: Are we still off the record?

Mr. Brown: No, I don't want to be off the record on this, because we are furnishing the figures.

Mr. Bradford: Mr. Examiner, the dates shown on Exhibit 46, the top line, are also in error. I don't have the exact dates unless they are in this memorandum.

Mr. Brown: They are.

Mr. Bradford: If they are in the memorandum, I will say that Mr. Brown is correct.

Exam. Taylor: Now, let me know, Mr. Root, will you accept this as a supplement to your Exhibit 46, that is to say, Exhibit 46, page 2?

Mr. Root: That is right, Exhibit 46 is only one page.

Exam. Taylor: Well, I say——

Mr. Belnap: Why not, Mr. Examiner, let it be copied in the record?

Exam. Taylor: Let it be copied in the record, but I would also like to have it attached to Exhibit 46 as it is filed in the docket.

Mr. Bradford: What would be wrong, Mr. Examiner, with having this furnished as supplement 2, Exhibit 46; then everybody would have it?

Exam. Taylor: Because, Mr. Bradford, anything that comes in later must be given another number.

[fol. 1379] Mr. Bradford: That is right.

Exam. Taylor: If you will, Miss Reporter, copy that in the record and then attach it to Exhibit 46 as page 2 of that exhibit. There is no objection to that from anybody?

Mr. Bradford: None from me.

Exam. Taylor: Very well.

(Which said document is in words and figures as follows:)

January 18, 1940.

The following Interstate local rates were in effect on grain from Morris, Illinois, to Chicago, Illinois:

January 8, 1914	5½ cents per 100 pounds
June 25, 1918	7
August 26, 1920	10
Jaunary 1, 1922	9
March 28, 1938	9½

(Mr. Allen's exhibit 46 is in error in giving the August 26, 1920, date as August 26, 1926; and in giving the January 1, 1922, date as January 1, 1932.)

The rates above named are contained in the following tariffs:

C.R.I & P. Railway Tariff I.C.C. No.

C-9446	C-11734
C-10603	C-12146
C-10758	C-12497
C-11004	C-12579
C-11168	C-12847

[fol. 1380] The rates above named were also the so-called Illinois Proportionals to Chicago; that is, the specific, or division, to Chicago of the one-factor through rates from Morris, Illinois, to Eastern Tunk Line territory, contained in the following tariffs:

Tariff I.C.C. No.

C. R. I. & P. Railway	C-9455
Do	C-9999
Do	C-10311
Do	C-10329
W. J. Kelly, Agent	839
Do	1126
B. T. Jones, Agent	1373
Do	1754
Do	2046
Do	2515
Do	3055
Do	3356

Mr. Root: Off the record.
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Are we ready to proceed, Mr. Brown?
Mr. Brown: Yes.
Exam. Taylor: Proceed, Mr. Brown.

WILBUR H. ALLEN resumed, having been previously [fol. 1381] sworn, and testified further as follows:

Cross-examination (Contd.).

By Mr. Brown:

Q. Mr. Allen——

A. Yes, sir.

Q. On Exhibit 48, the first item is direct to river buying and the total charges are shown as 5.63 per bushel?

A. Yes.

Q. Now, for convenience, take your Exhibit 45, and on the first column of rates, which is via 9½ IP rate to Chicago, let's call that A. Let's take the next column, which is 3 cents lake rate and call that B; the next column, which is 3 cents plus barge rate, call that C, and the truck, D. I am only doing that because it will expedite the questions I intend to ask. Now, if we take this item of 5.63 cents per bushel, which is the first item on Exhibit 48——

A. Yes.

Q. I find that it is short three-quarters of a cent a bushel of the 6.38 per bushel shown in item 8, column C, Exhibit 45. Now, is that three-quarters of a cent deduction there made up of item 6, a quarter of a cent, and item 7, half a cent?

Mr. Root: You are referring to Exhibit 48, weren't you then?

Mr. Brown: Yes, sir, and comparing it with these items that are given on the left side of Exhibit 45, and I am asking if the deduction of ¾ of a cent is not found in those items 6 and 7; the first being a quarter of a cent and the second [fol. 1382] ½ a cent per bushel.

The Witness: The 5.63 on Exhibit 48 comes from the next to the last column on Exhibit 45.

By Mr. Root:

Q. What is that column headed?

A. That is direct river buying against a 9½ cent rate point.

By Mr. Brown:

Q. Well, if that means direct river buying, shouldn't the deduction be item 2, column C, which is a cent a bushel from the 6.38 a bushel?

Exam. Taylor: What is that again, please?

(Question read.)

The Witness: No. The man that is loose—I mean the man that maintains the river house, he has got right below that a quarter of a cent; he has already got a cent and a half. That gives him a quarter of a cent extra for maintaining, like they do, somebody down in a foreign district to the river town or foreign community, you might say, to pick up the grain from down there. That allows him a quarter of a cent which they would have to pay at least to maintain somebody out in the country to buy the grain.

By Mr. Brown:

Q. Well, that quarter of a cent there which appears on the right half of the sheet——

Exam. Taylor: Pardon me. I see you have lettered these columns. Let's proceed to letter all of them. E would be the 12 cent IP.

Mr. Brown: Yes.

[fol. 1383] Exam. Taylor: F, via 6½ lake rate.

Mr. Brown: Yes.

Exam. Taylor: G, via 3 cent rate on barge to Chicago; H, via truck direct to Chicago; I, direct river buying on 9½ cent IP rate.

Mr. Brown: Yes.

Exam. Taylor: J, direct river buying on 12 cent rate.

By Mr. Brown:

Q. Well, I understand from your explanation, Mr. Allen, that the difference of three-quarters of a cent comes between what is shown in column C and what is shown in column 1, opposite item 2, which is labeled "Local elevator expense"?

A. That what you are referring to as column C takes care of the way that we operate our plant by maintaining a house at Morris. This other here is the man that has the river and just maintains a man out in the territory to buy the corn.

Q. Yes, but your quarter of a cent of bushel under column 1 is for direct river buying on a 9½ cent IP rate, and I don't understand there is any such thing.

A. Well, that means in competition, just like our own town down there. I am referring to a house down there that

does buy direct from the river, and that is the way he operates. Somebody down at Dwight or other territories there that buys for him allows him a quarter of a cent for what corn they can pick up.

[fol. 1384] Q. Well now, let's see if I can get this straight. This quarter of a cent a bushel goes to some solicitor?

A. That is what you might call him.

Q. Who is soliciting business for delivery at a river house?

A. Yes.

Q. Well, when he does that isn't he soliciting for the river house for shipment by barge?

A. Yes.

Q. How can you charge that up under a column that refers to 9½ cent IP rate?

A. I am not charging it up to it.

By Mr. Root:

Q. Explain that.

A. That is the direct river buying—I suppose if you would go clear on, had room there, I would say in the town that has a 9½ cent IP rail rate out of it. And the same way with the next column, where I say direct river buying on a 12 cent rate. That would be direct river buying in a town which has a rail rate out of it of 12 cent IP rate.

By Mr. Brown:

Q. Well, assume now that if you are doing the buying, you would add a cent.

A. Yes.

Q. Under item 2.

A. Yes.

Q. Column C.

A. Yes.

[fol. 1385] Q. If someone else also operating an elevator hired a solicitor, he would only add a quarter of a cent?

A. Yes.

Q. In other words, your charge would be three-quarters of a cent higher than the man who employs a solicitor?

A. That is right.

Q. All right. Now, let's take this 5.63, or rather let's take the 6.38.

Exam. Taylor: From Exhibit 48?

Mr. Brown: Yes.

By Mr. Brown:

Q. Now, that is the local elevator who goes to the river?

A. That is just like we operate.

Q. That would be you?

A. Yes.

Q. Now, if the Allied Grain Dealers Corporation saw fit to go around you and make a bid to the farmer direct for delivery by that farmer to the Allied, wouldn't that figure be reduced to 5.38 per bushel?

Mr. Root: Do you mean 5.38 or 5.63?

Mr. Brown: 5.38. I am still allowing for the 75 cents to go in.

The Witness: Well, that would be true if the group of elevators in that territory didn't control this river house.

By Mr. Brown:

Q. Well, suppose that——

A. And didn't go outside the Morris territory to buy any corn.

[fol. 1386] Q. Well, suppose that, just assume that there is another buyer at Morris not in any way connected with either the Square Deal or the Allied Grain Dealers Corporation and he bids the farmer direct and has it brought in, and if he operates on the same profit as you and makes the same bids, wouldn't the total charge be 5.38 a bushel instead of your 6.38 a bushel?

A. Yes, if you are supposing that, but that is not the way this is done.

Q. Is isn't the way you do it?

A. No, it is not the way—we have already got a house in Morris that is buying direct, and here is the way he does it. In order to get volume, he has to spread out further than the Morris territory and he has got to keep two or three solicitors on his payroll out there in these outlying districts to buy this corn. It is a physical impossibility for one man to sit in an office down there and reach out 25 or 30 miles, in contact with these farmers.

Q. All right, if you want to insist on that quarter of a cent getting in, let's get it down to 5.63 and let's add that quarter of a cent which this independent fellow would have to pay, that is 5.88. Then take out the 1 cent a bushel which is shown as your elevator charge. The charges would get down to 4.88 a bushel, direct buying from the farmer?

A. No.

Mr. Root: Read that question, please.

(Question read.)

[fol. 1387] By Mr. Brown:

Q. I mean the through charges would get down to 4.88 a bushel. Couldn't that be done under your own figures?

A. I don't get just exactly the connection of that 5.88 you are talking about.

Q. Well, here is what I did. I took your own net figure of 5.63.

A. Yes.

Q. Which is the first item on Exhibit 48, and instead of using that in the first place, I took the gross figure of 6.38 a bushel and took 1 cent off, which is what you show for your local elevator charge.

A. Yes.

Q. I said then an independent man who went direct to the farmer and bought the grain instead of going through the Allied stockholders could get those total charges down to 5.38 a bushel. Now, it doesn't take much——

A. No, that is right, if you are going to do it, that is right.

Q. Now, you didn't think that was right because I hadn't put in a quarter of a cent?

A. Well, I——

Q. If I am going to have to put in the quarter of a cent, I want to go down to the 5.63 which you show; then I will add this quarter of a cent as solicitation charge.

A. You are adding that the second time. It is already in that 5.63.

Q. Very well. Then I will just take 1 cent off of the 5.63 [fol. 1388] and get it down to the 4.63. So the elevator operator who buys direct from the farmer——

Q. Hold on a little. We have allowed him a cent and a half to run that elevator down there.

A. What elevator is that?

Q. The one down here at the direct river buying that has got the 5.63 figure we are talking about.

By Exam. Taylor:

Q. That is possibly at Wing?

A. No.

Q. Because the figures on the right refer to Wing.

A. I am speaking about the independent elevator that would be located right on the river.

By Mr. Brown:

Q. Now, let's assume that his charge of a cent and a half for putting it through the elevator would be a fair charge for him; if that is a fair charge for you to set up for your expense.

A. How much?

Q. When I say "your expense," I mean the Allied Grain Dealers.

A. A cent and a half, is that what you said?

Q. Whatever the charge you put up there.

A. I put up a cent and a half.

Q. Al right, I have got that in mind.

A. Yes.

Q. That is all in the 5.63 of your net figure?

A. That is right.

[fol. 1389] Q. Now, you said you get that, the 5.63 as the net figure. Then, I say, inasmuch as that includes your 1 cent local elevator expense, we cut that out.

A. No.

Q. Then the direct buyer gets down to 4.63.

A. No, you don't, because he has got to have the cent and a half to run the house.

Q. I am not cutting out the cent and a half; I am cutting out item 2 in column C.

A. Which column are you cutting it out of?

Q. I am cutting it out of your 5.63.

A. Out of column I?

Q. No, sir.

A. Column C?

Q. Yes, sir. Item No. 2, column C is this one cent charge for going through your local elevator expense. Now, that would be eliminated if another buyer, river point buyer whose expense was a cent and a half a bushel for putting it through his house bid the farmer direct and eliminated that expense of one cent a bushel, because it wouldn't go through his elevator, it wouldn't go through any country elevator; direct from the farm to the river house. That expense, it would be cut down as low as 4.63 for the total charge from the farm to the river house and from the river house to Chicago?

A. I don't agree with you. You have taken that cent out [fol. 1390] when we took out or when we added the .25; took out that cent there and replaced it with the .25.

Q. I was willing to do that at first.

A. That is what we are talking about.

Q. No. You suggested that that 25 come out. I am willing to leave it in, if it is an actual solicitation expense.

A. That is what it is.

Q. Then I will go back to the 5.63, your own net figure, add a quarter of a cent a bushel solicitation to the independant river buyer.

A. Why do you want to add it to 5.63 when it is already added in there?

Q. That is what you said before.

A. I didn't say no such thing. You are the fellow that is doing the saying.

Q. Now all right, I will take it out again, 5.63——

Exam. Taylor: Off the record.

The Witness: If you will read this top heading up here, maybe that would clear it a little bit: "Also, showing from 12 cent rate points IP in comparison with 6½ cent lake rate to Chicago and 3 cents barge rate, also, what direct buying by river houses could do to the local dealers" located in a point, at a 9½ rate point.

By Exam. Taylor:

Q. That would be Morris?

A. That would be Morris.

[fol. 1391] Q. And 12 cents would be Wing?

A. Would be Wing, see. What he could do to him. That is what I am trying to point out.

By Mr. Brown:

Q. I see. What he could do to put him out of business?

A. Yes.

Q. I get you now.

A. That is the idea.

Q. Very well. Now, I will have to go back to the left side of the page and take item 8, column A, and you show 9.08 cents per bushel.

A. Yes.

Q. For the IP buyer who ships IP and pays 9.08 a bushel to get to Chicago?

A. Yes.

Q. Now, as I understand it, under column I, the same item No. 8, the direct river buyer would get it for 5.83 and he

would have the rail shipper beat 3.45 cents per bushel, is that correct?

A. That is correct, yes, sir. We agree on that, don't we?

Q. All right. Of course, I want to say that in both column I and column C, those two items 6 and 7, we think shouldn't be there. But I have got a question and it is just this: The direct buyer could pay the farmer three-quarters of a cent a bushel more than is paid in today through the Allied Grain Dealers Corporation?

[fol. 1392] A. No, sir, you are off your trail again.

Q. You can't get away from that, the different between 5.63 and 6.38?

Q. Yes.

A. Sure, that is correct.

Q. Sure, that is the difference?

A. Yes.

Q. Between those two bids?

A. That is 75 cents a hundred.

Q. So the direct buyer goes to the farmer direct, and he has got to hustle to the extent of three-quarters of a cent a bushel?

A. Yes.

Mr. Brown: That is all.

Mr. Root: We would have admitted that, Mr. Brown, if that is all you want to know.

The Witness: We have got a man down there going direct and this is our only way to combat him. And we are fighting for an existence there.

Exam. Taylor: Pardon me, gentlemen. I think somebody said 75 cents a bushel.

Mr. Brown: Three-quarters of a cent a bushel.

Exam. Taylor: Three-quarters of a cent a bushel is correct.

The Witness: 75 cents a hundred.

[fol. 1393] Exam. Taylor: Mr. Wheat.

By Mr. Wheat:

Q. Mr. Allen, you referred to the loss of grain business into Chicago in the last few years to Indianapolis, Decatur and Peoria.

A. Let me see what I said about that. I said the Chicago grain market had been losing grain for years to other markets, such as Decatur, Peoria and Indianapolis, because of the strict rules and regulations of the Chicago Board of Trade.

Q. How far back did you check that?

A. I didn't check it in figures at all; I checked it from my own knowledge and experience, when I operated an elevator downstate here a hundred miles.

Q. Do you know how much grain Peoria, Indianapolis and Decatur have got in any stated number of years?

A. Well, I have seen the figures but I couldn't relate them.

Q. Have you checked up the receipts at Chicago during any stated number of years?

A. Yes, I have got them all down here somewheres, if you want me to read them to you.

Q. Could you tell me about what period?

A. I will give them to you here from 1922.

Q. Let's start about 1929.

A. I can give them to you from 1922.

Exam. Taylor: He wants them from 1929.

Mr. Belnap: And might I suggest, Mr. Wheat, that after [fol. 1394] 1934, they are all in the record; Mr. Brown's exhibit. It doesn't seem to me to be necessary to encumber the record.

Mr. Wheat: I want to know how the gentleman arrived at his conclusions that the receipts at Chicago were falling off and they were increasing at Decatur, Indianapolis and Peoria.

The Witness: I didn't say that. I said they had been losing grain.

[fol. 1395] By Mr. Wheat:

Q. To Decatur, Indianapolis and Peoria?

A. Yes, from this way: When I was a buyer down here at Fisher, Illinois, which is 13 miles out of Champaign, the Indianapolis and Decatur bids were enough more over Chicago all the time that we hardly ever paid any attention to the Chicago market.

Q. When was that? Can you tell me that?

A. I left there in 1926. I was there from 1918 or 1919 to 1926.

Q. Do you know how the Indianapolis market gets the grain, Mr. Allen?

A. Well, we got our bids through the I. H. French and Company, Champaign.

Q. I mean on what basis?

A. F.O.B. our track.

Q. In other words, it wasn't a delivered price Indianapolis, was it?

A. Not at all.

Q. Wasn't it based on the Ohio River rate on a market rate, ordinarily?

A. I believe on the New York rate, ordinarily.

Q. The way the Decatur bid is ordinarily made, too?

A. That bid is so much F.O.B. our track, yes.

Q. That was in 1926?

A. Well, that was up to that time. I left there in 1926.

Mr. Wheat: That is all I have.

[fol. 1396] Mr. Bradford: May I ask one question along that line?

Exam. Taylor: Mr. Bradford.

By Mr. Bradford:

Q. How far is Fisher, Illinois, from the Illinois River?

A. It is just about—I think it is around 75 or 80 miles.

Q. And would the nearest loading point on the Illinois River for barge line grain from Fisher be that far as you stated, or would it be further? Take Morris.

A. Morris would be about the most direct line, yes.

Q. Do you make any claim in the statements you made about losing grain, Chicago losing grain to Indianapolis, Decatur and Peoria, that is from northern Illinois?

A. I am speaking of Fisher or Wing, any of those places that have the Wabash or like the Central there at Fisher that have the Indianapolis bids.

Q. And your knowledge of the bids was based on your experience up to 1926?

A. I know that they lost business right along there for the reason that the Indianapolis and Decatur bids were higher than the Chicago.

Q. Since 1926, do you know what the situation has been as to Wing; take that as an example.

A. Well, Mr. Barkley testified——

Q. No, I am asking you if you know; I am not asking what Mr. Barkley testified.

[fol. 1397] A. Well, the bids come up to Wing on the Wabash without any—that is, he gets the Decatur bids right along.

Q. I am talking about Indianapolis now; I am not talking about Decatur.

A. I don't suppose that Wing gets an Indianapolis bid that is any good to him; I don't know.

Q. Then, so far as your statement about Chicago losing grain to Indianapolis, it doesn't include Wing in this territory we have reference to in this case, does it?

A. No, I would say not.

Mr. Bradford: That is all.

Exam. Taylor: Anything further by counsel in support of respondents? (No response.) Redirect.

Redirect examination.

By Mr. Root:

Q. Mr. Allen, on cross-examination there were quite a number of questions and some discussion relative to who made out the checks.

A. Who made out what?

Q. Who made out the checks to the Allied Barge Corporation in the payment of freight from Morris to Chicago for Cooperative Allied Grain Dealers Corporation grain. I wonder if you could state that specifically to clear up the record.

Mr. Enoch: I think that is clear in the record, unless he wants to change his testimony on direct.

Mr. Root: I don't think it is. I think in about thirty [fol. 1398] words he can straighten that out.

The Witness: If a barge of corn arrives in Chicago in one of our barges and when it is weighed out and the official weights are given, the Continental Grain Company, if they should be the ones that buy the corn, issues their check direct to the Allied Barge Company for the freight; and if it should be sold by Mr. Robbins through a commission house and the commission house, in turn, sold it to one of these river—I mean the man that actually buys the grain, then the check to the Barge Corporation would come from the

commission house, made payable and back to the Allied Barge Corporation.

By Mr. Root:

Q. And I take it, the balance, the sale price of the grain in either event, deducting the freight, would be remitted to the Allied Grain Corporation?

A. That is where they get theirs.

Q. Mr. Allen, in connection with the operation of your Farmers' Square Deal Grain Company in Morris, are the bids which you give to the farmers for their corn or other grain F.O.B. the farm, or delivered to the elevator?

A. The blackboard that we have in the office there says whatever the price happens to be that day F.O.B. the farm.

Q. Well, what percentage of the corn delivered by your elevator during the past two or three years—I mean now the Farmers' Square Deal—has been purchased F.O.B. the farm?

A. Oh, I think 99 per cent of it.

[fol. 1399] Q. And most of that is hauled to market in your own trucks, in the three trucks you described this morning.

A. Practically all of it, yes.

Q. Occasionally you have to rent others as the business demands?

A. As the business demands, yes.

Q. Will you explain for the purpose of the record how you, as an individual, acquired title to the ten shares of stock in the Cooperative Allied Dealers Corporation that you mentioned this morning?

A. At the time that the subscription list was circulated, the Farmers' Square Deal subscribed for 70 shares at $100 a share, which was $7,000. I was not a member of our own Board, being manager, and we have directors other than that. I wasn't eligible as a director in the Allied Co-operative—Allied Grain Dealers Association to be an officer. So when they made out the certificates, they made out the—my board of directors instructed that 60 of these shares be made out in the name of the Farmers' Square Deal Grain Company and ten of them be made out in my name, and then at the end of the year, we had a fairly decent year and they wanted to give me a bonus and they wrote it into the records of the company and endorsed it on the stock certificate, that these ten shares were given to me without any

strings attached to them at all, as a bonus for the year's work.

Q. And you are the only individual other than an elevator [fol. 1400] operator who does own stock in the Cooperative Allied Grain Dealers Corporation?

A. Yes, that don't——

Q. Don't own and operate——

A. Don't own an elevator outside.

Q. I see. In cross-examination, you quoted figures as to surpluses, bills payable and so forth of an average of fifty elevators given by Harry Hieser, an auditor for a grain body's annual meeting. Is that the body of which Mr. Farlow is secretary?

A. It is, yes, sir.

Q. And that is the same Mr. Farlow that testified in this case?

A. Yes, sir.

Q. And was that report made in the presence of Mr. Farlow?

A. It was.

Q. To your knowledge, he has been familiar with those figures?

A. Absolutely.

Q. On cross-examination, it was brought out that over the past eight years, I believe, wasn't it, Mr. Day mentioned, perhaps ten, that there has been a variation of approximately $1 per bushel in the price of corn or the paid-for price of corn, that is, to the producer. Now, in the ordinary operation of the elevator, would it make any difference to the elevator operator in the amount that he gets, what the price of corn to the farmer is?

[fol. 1401] Exam. Taylor: Just a minute.

Mr. Root: I got that pretty involved.

Exam. Taylor: Will the reporter read that question?

(Question read.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: Our bids are based practically—the competition has drove us to the point where we have to bid everything, practically, everything there is in it and I don't think, in the last several years, that we have ever bid any different than just that way.

By Mr. Root:

Q. What way?

A. Than two cents under the bid that Mr. Robbins gives to us, which takes care of the hauling and their elevator charge.

Q. Back before the days of the river elevators and you used to sell all your grain by rail, how much did you try to make for the elevator in those days?

A. Well, the common figures and the way the boys used to get together and try to agree what was a working basis, and it was conceded at that time to be 2½ and 3 cents a bushel as an elevator operating profit, and then the farmer had to bring it into you. Now, we are buying it at a 2 cent margin and hauling it for him, right direct from the farm.

Q. What I am trying to bring out, assuming that you buy 500,000 bushels of corn this year at the Farmers' Square [fol. 1402] Deal Grain Company for 30 cents a bushel and next year you buy 500,000 bushels of corn at a dollar a bushel, would there be any material difference in the profit that the Farmers' Square Deal would make for the year, all other factors being equal?

A. No, the margin would be the same.

Q. On cross examination, there was some question discussed with regard to contacts which you have had with barge lines. With what barge lines have you had personal contact?

Mr. Enoch: I don't recall that coming up on cross examination. That is getting back into something that is direct. That is a question that hasn't been gone into.

Exam. Taylor: Who asked that question?

Mr. Cole: I did.

Exam. Taylor: Mr. Cole.

By Mr. Root:

Q. There was a little misunderstanding as to what the contact was, whether it is personal or business capacity. I want to straighten that out.

A. I have had no contact or dealings with any barge concern personally. It has all been in the interest of either the Cooperative Allied Dealers Corporation or the Allied Barge Corporation.

Q. You, of course, have had personal dealings with the Allied Barge Corporation?

A. I have, yes. It is our own——
Q. And on——
[fol. 1403] Mr. Enoch: Let him finish.

By Mr. Root:

Q. Go ahead.
A. That is our own company there.
Q. You personally have dealt with that?
A. Yes.
Q. Now, when you dealt with the Barry Barge Line or the A. L. Mechling Barge Line, on whose behalf were you dealing?
A. Either the Cooperative Grain Dealers Corporation or the Allied Barge Corporation.
Q. But not for yourself as an individual?
A. Not my own stuff individually at all.
Q. Mr. Allen, do you know whether the grain sold by the Cooperative Allied Grain Dealers Corporation is sold F. O. B. Chicago or CIF Chicago?
A. CIF Chicago, I think.
Q. And if you made any statement——

By Mr. Day:

Q. Just a moment; don't you know?
A. Yes, I will say CIF Chicago.

By Mr. Root:

Q. If you made any statements to the contrary in your testimony, would you like to correct them at this time?
A. Sure.

Mr. Enoch: Oh, let's be specific about that.
Mr. Root: Well, if he has at any time said——
Mr. Enoch: You mean about the CIF proposition?
Mr. Root: CIF and F. O. B., that is all I am referring to.
[fol. 1404] Mr. Enoch: All right.

By Mr. Root:

Q. Mr. Allen, on cross examination you stated that you had some doubt as to whether or not the grain was actually graded and examined in Chicago. Upon what fact do you base the doubt which you have?
A. Well, sometime this winter, I can't exactly state the date, we had——

Q. Who is "we"?

A. The Farmers' Square Deal Grain Company had two —about 20,000 bushels of oats that were loaded into two separate hatches on these barges and sent into Chicago. We had, in an outside shed there we had——

By Exam Taylor:

Q. Outside shed where?

A. At Morris, at the Farmers' Square Deal, we had a roof that leaked. And on the top of that, when the oats come down first, was a lot of musty oats that were of an inferior quality and we sorted those out and put them in our own elevator there in town and held them until after we get all the good oats in, and then we loaded these poor ones in the last hatch, which was the last hatch loaded; and when they arrived in Chicago, the ones that we thought was the musty and poor oats graded No. 2 and the hatch of good oats graded sample grade. So that is the reason, as I said this morning, that I don't think they ever looked at them.

By Mr. Enoch:

Q. That might be a reflection on the origin end as well as [fol. 1405] the destination?

A. That was our experience. I don't know what happened. And I also had one time several years ago, a carload of beans that during the entire season we had sorted them up, all the bad ones that come in and throwed them in a bin by themselves; and when the season was over, we loaded them on a car and consigned them to the Allied Mills, Incorporated, at Peoria; and I know those beans, two-thirds of them were entirely rotten and I expected to get about 60 cents bushel for them because I had bought them on that kind of a discount, and they come back grade No. 2 and paid me $1.44 a bushel for them.

By Mr. Brown:

Q. They were just being nice to you, weren't they?

A. Sure, I got no kick coming on that. I am trying——

Mr. Brown: Will you have him tell us the date on that, Mr. Root.

By Mr. Root:

Q. Will you give the weight as near as you can.

Mr. Brown: I want to know the date.

The Witness: I can't tell you to the day, but I can tell you the year and the time of the year. It was in the bean time, that would be in the fall, probably in October.

By Mr. Enoch:

Q. Since 1900, wasn't it?

A. Oh, a little bit since that. But that was in the fall of —let's see, I went to Rochester, Minnesota, in 1926, took up this job down there in 1927. It was either the fall of 1927 [fol. 1406] or '28.

Q. Very indefinite, of course. You didn't appeal that inspection at Peoria, did you?

A. Not on your life.

By Mr. Bradford:

Q. Would you mind stating who the Chicago shipment was billed to?

Mr. Root: What was that question?

Mr. Bradford: I asked him who the consignment to Chicago was billed to.

The Witness: Mr. Robbins stated it just down there and I don't know as I can tell you exactly, unless you want me to ask him right here.

By Mr. Bradford:

Q. You know all about the grade, but you don't know who handled it?

A. I wasn't interested particularly in who handled it. I know what came back.

Q. In other words, you don't care to say who?

A. No, I would tell you, if I knew.

By Mr. Brown:

Q. Mr. Allen, did you also have the right to appeal on that barge at Chicago?

A. Well, I was afraid they might grade them both sample grade then because I knew one of them was sample grade.

Q. Well, you didn't lose money on either one of those transactions, did you?

A. No, I made money.

[fol. 1407] Q. Still, you don't think the inspection is very good?

A. If it had been very good, we would have got what was coming to us; but otherwise, we got the best of it.

Mr. Bradford: Off the record.

(Discussion outside the record.)

Exam Taylor: Back on the record.

By Mr. Root:

Q. Mr. Allen, on cross examination, I believe you made this statement, or this statement in substance, that you had no interest in grain after it was delivered in Chicago. By that I mean the Allied Grain Dealers Corporation had no interest in, I take it that you meant. Will you explain that situation? Explain just what you did mean.

A. I meant no physical interest in it as far as handling the grain or anything of that kind, or the money. Of course, I am interested in grain that hits Chicago on whether it was—how it can be handled when it gets here. If the cancellation of this ex-river grain affects the buying power of the man that we sell to, of course I would be interested in it. I am interested in it from the point that if he can't take this grain and deliver it on future contracts and he can't ship it east, why, he will buy this grain back cheap enough from the stated Chicago price to make up this difference in freight.

Q. One more question. Mr. Allen, when the Farmers' Square Deal Grain Company or any other elevator sells grain to the Allied Grain Dealers Corporation or Coopera-

[fol. 1408] tive Allied Grain Dealers Corporation, does the elevator so selling guarantee title to the grain to the Cooperative Allied Grain Dealers Corporation?

A. Yes, we have to watch out for chattel mortgages and liens and all that stuff.

Q. Now, calling your attention to Column 1 in Exhibit 45, you have a notation in there of 25 cents paid to what you have described as the solicitor.

Mr. Bradford: 25/100.

By Mr. Root:

Q. Yes, a quarter of a cent a bushel paid to a solicitor by river house buying direct from the farmers. Now, in such

event, would that solicitor receiving the 25 cents per bushel——

Exam. Taylor:

By Mr. Root:

Q. Or quarter of a cent per bushel, guarantee title to the river house?

A. No, he is just a hired man that drives the country and solicits grain.

Q. So that the river elevator would have to take the chance on the title of grain himself?

A. That is one reason that you need never fear very much of river direct buying to be very serious, because back in this country somewheres, you have got to have somebody that will look after the personal contact of the farmer and the title to this grain and other things that are connected to the man then handling it, and one man sitting [fol. 1409] down there at the river and trying to reach out that far with four or five million bushels a year couldn't possibly do it.

Q. In Morris, you have a man that does that and he hasn't put your Cooperative group out of business yet, has he?

A. No, he hasn't. He put himself out of business.

Mr. Root: That is all, your Honor.

Exam. Taylor: Any other questions by protestants?

Mr. Day: I have a few here.

Exam. Taylor: Mr. Day. Redirect—or recross, rather.

Recross examination.

By Mr. Day:

Q. Did you discuss with Mr. Root during the noon recess the answers that you made on cross examination here today?

A. Nothing more than he called my attention to what I said in regard to what I interpreted the physical interest in this corn when it reached Chicago.

Q. And he suggested some changes should be made in your answers?

A. He said I was taking the wrong attitude as to what your question was.

Q. Now, how many of these fifty elevators that were covered by this convention's study are located in Grundy County?

Mr. Root: I believe the exhibit shows that, Mr. Day.

Mr. Day: No, it doesn't. It is just his oral testimony that it was an average of fifty elevators in the State of [fol. 1410] Illinois.

The Witness: I can't tell you just there——

By Mr. Day:

Q. You don't know where those elevators are located?

A. No, I just have the pamphlets that are handed out each year at the convention.

Q. And to be brief, you don't know what elevators they are?

A. I couldn't tell you just what——

Q. And where they are located?

A. They are located in the——

Q. State of Illinois?

A. State of Illinois, yes.

Q. And there are 102 counties in Illinois?

A. Yes, I guess that is right.

Q. Well, there were when I went to school; I guess they haven't changed.

A. I don't think so.

Q. And the State of Illinois is about 400 miles long, or more, isn't it?

A. Yes.

Q. And a couple hundred miles wide?

A. Yes.

Q. Now, do you know what the total production of grain in Illinois was, say, during 1938 or 1939?

A. No, I couldn't tell you without the records.

[fol. 1411] Q. You stated that you were driven by your competition to make your present basis of bidding about 2 cents under what Mr. Robbins bid to you?

A. That is right.

Q. What competition did you mean?

A. Well, we have the Quaker Oats competition down there.

Q. Down where?

A. At Morris.

Q. Have they a plant at Morris?

A. They have a plant at Morris, and then we have the——

By Mr. Root:

Q. And they buy in the countryside?

A. And they buy in the countryside. We have the James Finnegan Grain Corporation that operate on the river and we have elevators on all sides of us.

By Mr. Day:

Q. You don't sell all your grain to Finnegan? Doesn't Finnegan sell all its grain to Quaker Oats?

Mr. Root: You got it just reversed.

Mr. Day: You ask him; I am not familiar with that situation.

Mr. Enoch: It is my fault.

The Witness: I might straighten you out as far as just what happens down there; that the Quaker Oats having a plant on the railroad there today wouldn't go in with our Allied bunch and they ship their grain through Finnegan on some sort of an arrangement. Now, whether it is sold [fol. 1412] to him or whether it is sold up here in Chicago I don't know, but I think the most of their grain goes through Finnegan in some form.

Mr. Day: That is all I have.

Mr. Cole: I would like to——

Exam. Taylor: Mr. Cole.

Mr Cole: If it is my turn.

Exam. Taylor: Yes.

By Mr. Cole:

Q. Mr. Allen, about this interest that you have in the ability of the grain to pass through Chicago, do you know of there being at the present time any definite connection in the price of the grain in Chicago based upon any privileges that the grain has beyond Chicago?

[fol. 1413] A. Well, reading the rules of the Board of Trade, I know that grain that don't have a reshipping privilege is not deliverable on contracts. And if any grain that we would sell to them that didn't have reshipping privileges, he couldn't demand that we sell to them; we sell to Mr. Robbins and Mr. Robbins dealing up there.

By Exam. Taylor:

Q. By "we," you mean the Square Deal?

A. I mean the Square Deal. He possibly couldn't get as good a price for the grain that we have to offer him if the man he wanted to sell to didn't have a definite outlet for that grain when he bought it.

By Mr. Cole:

Q. Now, Mr. Allen, in these last few years—you said that the grain has to have a reshipping privilege out of Chicago in order to entitle it or in order to enable it to get through without a discount, is that it?

A. No, I think I said that man that bought it may if he didn't know what he could do with it at the time he bought it, he would buy it at a discount. What I mean to say is that if we offered him, if the Co-operative Allied Dealers down there offered him 30,000 bushels of grain and he had an order laying on his table for it to go out by lake, he would know just what he could do with it, but if he didn't have an order laying on his table and we offered him the grain and this reshipping privilege was in, he could turn around and sell at hedge, as we call it, on the board, and [fol. 1414] then when the order did come in, he could pull his hedge off and sell the corn. But if this reshipping privilege was taken away, he didn't have the order and he couldn't sell it on the board, he would probably tell us he couldn't handle it or he would buy it back at enough discount to take care of that difference in the freight rate, going out of here.

Q. Now, if at the time——

By Exam. Taylor:

Q. Going out of Chicago?

A. Going out of Chicago.

By Mr. Cole:

Q. If at the time that this man was in the position to make that hedge, if there were varying provisions which still enabled him to have a reshipping privilege but the privilege being different in the amount of money that was to be connected with them, dependent upon whether the man went to trunk line destinations or CFA destinations,

would that have the same effect upon this man's difference in prices that he would secure?

Mr. Root: If the reporter would read that to me—I didn't understand it.

The Witness: It is too long for me to analyze.

Exam. Taylor: Read the question, Miss Reporter.

(Question read.)

Mr. Root: Your Honor, I——

The Witness: I think that is too complicated for me.

Mr. Root: I don't understand it.

[fol. 1415] Exam. Taylor: Can you reframe the question?

Mr. Cole: Yes, I will.

By Mr. Cole:

Q. Mr. Allen, you testified that it was necessary for the man to have a reshipping privilege, did you not?

A. Well, I believe I said that if he didn't have an order or didn't have a reshipping privilege, then he would have to buy it, he would have to buy it at a discount enough under the Chicago board bid to take care of the difference in the freight.

Q. All right. Now, let's suppose that he had a reshipping privilege but that the reshipping privilege was different to Trunk Line territory than it was to CFA territory as the destination.

Exam. Taylor: You mean different in amount?

Mr. Cole: Different in amount.

Mr. Brown: The rate?

By Mr. Cole:

Q. The rate he would have to pay would be different; the basis for it would be different. Have you ever heard of the man taking a different basis from which to construct his price for the grain?

A. I don't know as I get it all exactly, but we had a like experience up here several years ago when they had in that 6 cent lake rate.

Q. Just a minute, Mr. Allen, when you say 6 cent lake rate, are you talking about a rate from an origin to Chicago as the destination?

[fol. 1416] A. That is from Morris to Chicago.

Q. Now, Mr. Allen, everything that I have asked you about is concerned with the movement beyond Chicago. I don't care a hoot about how the stuff gets to Chicago; I never did. After the stuff gets to Chicago, I am asking you if there were different levies against the grain beyond Chicago, if the man that buys the grain in Chicago base his price upon those differences in the levies upon the outbound rate?

Mr. Belnap: Mr. Cole, can't you give an example in money what you are asking about?

Mr. Root: Very abstract.

By Mr. Cole:

Q. If the local rate from Chicago to Pittsburgh is 19 cents——

Mr. Belnap: What rate?

By Mr. Cole:

Q. If the local rate from Chicago to Pittsburgh is 19 cents and if the local rate from Chicago to Buffalo—what is that rate, Jack?

Mr. Brown: Depends on where it comes from.

Mr. Cole: I am talking about the local, the flat.

Mr. Brown: It would be 28½ cents local.

Mr. Cole: 28½?

Mr. Brown: Local from Chicago.

Mr. Cole: I am talking about that. 28½, did you say?

Mr. Brown: 28½.

By Mr. Cole:

Q. If the rate from Chicago to Buffalo is 28½ cents and [fol. 1417] if the local rate from Chicago to Pittsburgh is 19 cents—is that correct?

Mr. Brown: Oh, no, that is the same as Buffalo; local rate from Chicago locally to Pittsburgh and Buffalo, 28½ cents.

Mr. Cole: Off the record.

(Discussion outside the record.)

Exam. Taylor: Back on the record.
Mr. Brown: You withdraw that question then?
Mr. Cole: I withdraw the question.

By Mr. Cole:

Q. Mr. Allen, now suppose that the rates, the local rates from Chicago to Buffalo and Pittsburgh are 28½ cents flat, and the local rates to New York are 34½ cents. Suppose your grain in Chicago, moving east from Chicago, could take 26 cents to New York but 21½ cents to Pittsburgh. Would that make a difference in the price being secured for the grain in Chicago?

Mr. Root: Just a moment. By whom?

By Mr. Cole:

Q. By your Square Deal elevator when they go to sell it.

Mr. Root: You mean if he knows.
Mr. Cole: Yes, if he knows.
The Witness: Well, I am not a rate expert. I don't want to express my opinion on that because I just don't exactly get the figures.

By Mr. Cole:

Q. Well, in selling of the grain, have you ever had it [fol. 1418] brought to your attention that there is a difficulty or a price difference or an influence on the price dependent upon the territory in which that grain is later to go to?

A. That is what I started to tell you a minute ago when I shut off.

Q. What is that?

A. That a few years ago when we had this 6 cent local rate into Chicago——

By Mr. Root:

Q. A lake local you mean?

A. A lake local, similar to what we have now, that is when we were shipping on the rail and our barge down and we were trying to stay on the rail——

Mr. Cole: Yes.

The Witness: We would send car after car that would sell—we could look at the price quoted or we could look at the Chicago paper or anything and see that IP corn was selling at a stipulated figure, which was published, and that the—that would say IP sales, and right following it would be a sale on a lake basis as much as 2½ cents under what the IP sale was.

By Mr. Root:

Q. 2½ cents a what?

A. 2½ cents a bushel, and the commission man would explain it, this is the reason he couldn't get the price that was equal to the IP, was because that corn had no reshipping value.

By Mr. Cole:

Q. Which corn?

[fol. 1419] A. My corn or corn that was in there.

Q. The IP corn?

A. That my corn or corn that was in there went in on the 6 cent local rate, 6 cent lake rate; wouldn't sell as equal —wouldn't sell within 2½ cents of what the car right next to it sold because it had an IP billing. Otherwise, they just deducted the amount off of the freight, I mean off of the price, that leveled it back with the cost of the IP corn.

Q. You mean that the corn that had paid the greater freight charge in there——

A. Sold at highest price.

Q. Sold at the highest price because it had that extra freight charge increment in its value?

A. It had the reshipping value and the other car didn't.

Q. Well, the car that had the greater value, was that the car that had paid the higher freight charge in there?

A. Sure, but the man back at home here got just the same price.

Q. For the two cars?

A. For the two cars. It didn't make a bit of difference how they sold it, whether they sold it IP or whether they sold it lake, the man back home got the same price.

By Exam. Taylor:

Q. By the man back at home, you mean——

A. I mean my elevator.

By Mr. Cole:

Q. Then of the two cars, the car in connection with which they had laid out the extra 2 cents in freight charge, they [fol. 1420] still had that value connected with it over and above the car on which they had not initially laid out the extra 2 cents, is that correct, Mr. Allen?

A. That is correct.

Q. Now, on these other things, I don't remember whether you answered this question of mine as to whether you had ever heard of there being an influence, a different influence, whether the grain was going, say to Trunk Line or whether it was going to CFA destinations or whether it was going in export channels or things like that. Have you ever heard of a definite influence on the price you have ever been able to get for your grain?

A. I don't recall that, no.

Mr. Cole: That is all, thank you.

Exam. Taylor: We will have a recess for five minutes.

(Recess taken.)

Exam. Taylor: Have respondents finished? Mr. Enoch has some

By Mr. Enoch:

Q. Mr. Allen.

A. Yes.

Q. Do you recall your discussion with me during your direct testimony when we had under consideration Exhibit No. 32?

A. Yes.

Q. Have you intended, in your redirect in answer to [fol. 1421] questions by Mr. Root, to change that testimony?

By Mr. Root:

Q. Do you recall what Exhibit 32 was?

A. Yes, but I don't remember of the redirect or anything that referred to that.

Mr. Root: I didn't mean to.

By Mr. Enoch:

Q. Some of the questions related to you, only you dealt with the Continental Grain Company as a receiver rather

than Lowell Hoit. What I am anxious to find out is whether, as far as that exhibit is concerned and Lowell Hoit is concerned, you intended to change your testimony on direct?

Mr. Root: Now, Mr. Enoch—I just want to be off the record here.

Exam. Taylor: Yes, off the record.

(Discussion outside the record.)

By Mr. Enoch:

Q. Won't you say on the record that you hadn't intended to change your testimony?

A. That I hadn't intended to change it?

Q. That you had not changed your testimony in respect to the transaction to which I directed your attention.

A. I don't recall what the—do you just refer on that exhibit 32 just to that one that was directed to Lowell Hoit?

Q. Yes. You described——

A. Yes, that would stand.

Q. About the signature on that exhibit there?

A. Yes.

[fol. 1422] Q. And the payment of such charges as were mentioned?

A. They would be just exactly the same, except that the—just the firm names, that is the two different houses.

Q. You haven't intended to change what you said?

A. No.

Q. About Exhibit 32?

A. No.

Q. And the discussion in that connection?

A. No.

Q. Now, when you get to the Continental——

Mr. Belnap: Might I inquire what he meant by the "firm names"?

By Mr. Belnap:

Q. You said they would be exactly the same except the firm names would be different.

A. This one here he is referring to has the firm name of Lowell Hoit up at the top, and if we had been talking about Continental, it would be the Continental up there.

By Mr. Root:

Q. What do you mean by "talking"? If you had sold it to Continental, it would have said Continental?

A. It would have said Continental.

Q. If you had sold it to Lowell Hoit——

A. It would have said Lowell Hoit.

Mr. Root: Sold it to Brennan, it would have said Brennan?

By Mr. Belnap:

Q. The transaction would have been handled in exactly [fol. 1423] the same way in either event?

A. Either event.

By Mr. Enoch:

Q. Well, now, when the Continental makes out a check for freight charges, and I understand you to say that it does when they are receiver, when it is the receiver, to whom is that check made?

Mr. Root: Which check? Which check are you speaking about?

Mr. Enoch: What?

Mr. Root: Which check are you speaking about?

Mr. Enoch: Let's see if there is more than one check.

Mr. Root: He testified there were.

By Mr. Enoch:

Q. Well, to whom are the checks made?

A. The deduction from the total sum for the freight, that check would be made to the Allied Barge Corporation; and the deduction for the trimming and all other expenses attached to it would be deducted from the balance, and that check would be made less the draft that was drawn on it to the Co-operative Allied Grain Corporation. That takes care of the whole transaction.

Q. Now, when the Continental is the receiver, does the Continental go over to the office of Lowell Hoit & Company and get this gentleman who represents you there at the office to acknowledge receipt of those freight charges on this document which is surrendered to support the outbound movement on proportional rates?

A. Well, they get together in some fashion. I don't know [fol. 1424] whether they come over there or whether he

goes over there. I never inquired. They get together some way.

Mr. Enoch: That is all.

By Mr. Brown:

Q. Mr. Allen——

Exam. Taylor: Mr. Brown.

By Mr. Brown:

Q. Is there anything in the bids you now receive from the Chicago buyers for barge grain that shows premiums as being paid because that barge grain is now deliverable on future contracts?

A. I don't personally, Mr. Brown, receive any bids from the Chicago house. Mr. Robbins receives that and then he bids me.

Q. Let the question stand as made to you as an officer of the Allied Grain Dealers Corporation.

A. I don't do any of the active business of the buying, so I wouldn't know.

Q. Then why did you express the fear that there would be discounts if something happened so this barge grain wouldn't be deliverable on future contracts, if you don't know anything now about what the bids from the Chicago buyers are based on?

A. Well, we just know they will be, that is all.

Q. How do you know it if you have nothing to do with the grain after it is delivered in Chicago?

A. I told you the experience we had before.

Q. When was that and in what connection?

Mr. Root: Your Honor, if I may say so, I think Mr. Cole [fol. 1425] asked the identical question, received the same answer.

Mr. Brown: No.

Mr. Root: Sure, he did. Sure, he did, redirect.

Mr. Brown: No, in answer to you he said that he had no physical connection with the grain after it was unloaded in Chicago. I want to know whether he has got any financial connection with the grain after he has received his price for it. Unless there is a dispute about grades or weights or something like that; but after he is fully paid, what con-

nection has he, after it is unloaded at Chicago—when I say "he" I mean the Allied Grain Dealers Association of which he is an officer.

Mr. Root: Ask him that question. That isn't the question you asked him before.

Mr. Brown: No, of course, it isn't.

By Mr. Brown:

Q. Mr. Allen, didn't you, or in answer on redirect to your own counsel, say you had no connection, physical connection with the grain, barge grain after it is delivered at the Chicago elevator?

A. Not with the grain itself, no.

Q. If you have no physical connection with the grain itself after it is delivered at the Chicago elevator, what connection do you have with it?

A. The effect that the change in this——

Q. I didn't ask you about the effect; I asked you, what was your connection with it. Have you any control over it?

[fol. 1426] Mr. Root: No.

The Witness: No, I ain't got any control over it.

By Mr. Brown:

Q. Now, did you say you didn't have?

A. I have no control over it, no.

Mr. Brown: That is all.

Exam. Taylor: Any further cross-examination of this witness?

(No response.)

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Belnap: Mr. Examiner, Mr. Enoch asks that there be provided a witness to tell about the barge operations for handling this grain on the Illinois river. Now, Mr. A. L. Mechling is here. I do not represent Mr. Mechling but he has volunteered to take the stand and explain about his barge operations. I talked with him and shall ask him the questions about it. I call him to the stand.

Mr. Root: Mr. Examiner, before I drop out of here, I will have one witness in here tomorrow and of course I

will have the opportunity to put him on at that time. I don't want to foreclose myself.

Exam. Taylor: Mr. Mechling, take the stand.

Mr. Root: I want to offer Mr. Allen's exhibits, as supplemented by Mr. Brown's figures.

Exam. Taylor: Received.

[fol. 1427] Mr. Enoch: Did you make an offer just now?

Mr. Root: I make an offer just now.

Mr. Enoch: I want to object to the receipt of these exhibits in so far as they refer to rates of any transportation company moving on the water up here, because there isn't any evidence that there are any rates. If they are willing to concede that the items which refer to rates simply mean some phase of the cost of getting the grain up here, I have no objection to it.

Exam. Taylor: Any objection to that?

Mr. Root: The testimony has been that has been the cost. I understand on that basis, they would be admitted.

Mr. Oliphant: Mr. Examiner, might I inquire? Don't the rail exhibits show there was a rate of 4⅛ cents by water? Didn't they refer to it by "rate"?

Mr. Enoch: What is the point, Mr. Oliphant?

Mr. Oliphant: My point is that regardless of what kind of transportation company it is that issues that charge, it is a rate. Now, the rail carriers refer to the 4⅛ cent figure as the rate.

Mr. Enoch: That was all explained; that was taken from the protests.

Mr. Oliphant: But the fact remains, they call it a rate.

Mr. Enoch: And they simply called it what the protestants called it and it was shown that there were no rates [fol. 1428] and I don't want this to appear here as a rate.

Mr. Root: What, the 3 cent? It has been testified to as a rate and I think it will have to be accepted for whatever weight that carries.

Exam. Taylor: If you can't get together, the exhibits will be received subject to Mr. Enoch's objection.

(Exhibits 45 to 48, inclusive, Witness Allen, received in evidence.)

Mr. Enoch: Now, if your Honor please, Mr. Belnap said that I requested the appearance of some of these transportation lines. I might have done so but I don't recall

that I did. I simply inquired if they were going to be here. That is my understanding about that; am I right?

Mr. Belnap: No.

Mr. Enoch: I thought you would play fair with me. I didn't ask you to get any transportation company.

Mr. Belnap: I thought you did.

Mr. Enoch: I could get them here just as well.

Exam. Taylor: Are you going to take this witness?

Mr. Belnap: Yes, I will ask him.

Exam. Taylor: Proceed, Mr. Belnap.

A. L. Mechling was sworn and testified as follows:

Direct examination.

Q. Will you state your name?

[fol. 1429] A. A. L. Mechling.

Q. Where do you live, Mr. Mechling?

A. Joliet, Illinois.

Q. In what business are you engaged?

A. Engaged in business, barge line business on the Illinois River.

Q. Do you operate under a trade name in that business?

A. A. L. Mechling Barge Line.

Q. How long have you been in that business?

A. Well, I have been in the business probably for about 20 years.

Q. How long have you been operating as A. L. Mechling Bar- Line?

A. For the last ten years.

Q. About 1930?

A. That is right.

Q. And what is the general type of transportation services as to commodities carried that you have rendered?

A. Well, my principal interest in the barge line has been the towing of grain since 1930.

By Exam. Taylor:

Q. You mean towing of barges of grain?

A. Barges of grain.

By Mr. Belnap:

Q. With what equipment did you start in 1930?

A. In 1930, I had a small 60-horsepower towboat and no

barges. At that time, I towed barges that were owned by the Turnar-Hudnut people of Pekin and the barge of grain [fol. 1430] at that time was towed into Pekin and unloaded there.

Q. You say these were the barges of the Turnar-Hudnut Grain Company?

A. They were owned by them, yes, sir.

Q. Was that service rendered under the name of the Illinois River Packing Company, as far as Turnar-Hudnut was concerned?

A. As far as Turnar-Hudnot was concerned, yes.

Q. How much did you have invested in the business at that time?

A. Oh, I would say in the neighborhood of between three and four thousand dollars.

Q. When did you add to your equipment, first add to your equipment?

A. I first added another towboat in 1934. That was purchased from the grain company I was working for and I reconditioned the boat and put it back in that service.

Q. Still, at that time, you were just towing barges of grain?

A. That is right.

Q. Into Peoria?

A. Yes, sir.

Q. When did you start working or towing grain to Chicago?

A. In the fall of 1935, we made our first trip to Chicago.

Q. Still towing the barges of the shipper, is that right?

A. Yes.

Q. And at that time, were you towing for the Illinois River Packing Company as well as other shippers, or just [fol. 1431] for the Illinois River Packing Company?

A. At that time, I was just towing for the Illinois River Packing Company.

Q. When did you start barging grain into Chicago for shippers generally with your own barges, whether you owned them or leased them?

A. In 1936.

Q. What were the barges at that time, owned or leased?

A. They were leased.

Q. When did you commence to purchase barges?

A. Oh, I purchased the first barges, that is for grain, in 1937.

Q. And since that time, has your business been largely either towing barges of others or handling grain in your own barges into Chicago?

A. Yes, sir.

Mr. Enoch: Wait a moment. Read that, please.

(Question read.)

By Mr. Belnap:

Q. Do you still do any business into Peoria or Pekin?

A. I haven't in the last year, no.

Q. Prior to that time, did you do some?

A. Yes.

Q. Up until last year? Now, when did you add to your towboat equipment after 1937?

A. After 1937?

[fol. 1432] Q. Yes.

A. We built one towboat in 1938 and two in 1939.

Q. And did you rebuild and repower that towboat that you purchased from the Illinois Packing Company?

A. Yes, I repowered that in 1938.

Q. Did you in those years buy additional barges, 1938 and '39?

A. Yes, sir, I did.

Q. What is the equipment which you personally own at the present time?

A. Well, I own four towboats.

Q. What are their horsepower?

A. Two of them are 465, one of them 400 and one of them 260.

Q. How many barges do you own?

A. I have 17 barges.

Q. Of what capacity?

A. Well, two of them 400 ton capacity, two of them 500 ton capacity, 7 of them 850 ton capacity and six of them, 750 ton capacity.

Q. As to the equipment you just itemized, what is the book investment thereof?

A. About $300,000.

Q. Is there still some money due on part of this equipment?

A. Yes, sir.

Q. How many of the towboats are paid for?

A. There is two of them, the older ones are paid for.

Q. And the two that are not paid for, how much is still [fol. 1433] due on them?

A. About $50,000.

By Exam. Taylor:

Q. Each?

A. No, that is the two of them; $25,000 each.

By Mr. Belnap:

Q. How many of the barges are paid for?

A. There is ten of the barges that are paid for.

Q. And on the other seven, how much do you still owe?

A. Oh, between 50 and 60 thousand dollars, I don't know exactly.

Q. The amounts that you still owe on the equipment, you make payments on that monthly, do you?

A. Yes, sir.

Q. You have a net worth of approximately $200,000?

A. That is right.

Q. And that has been built up entirely out of the towing of grain or barging of grain on the Illinois River?

A. I wouldn't say grain only. In the past year I have had some of them chartered out and other lines of towing, so I wouldn't say it has been built up entirely of grain. However the biggest part of it has.

Q. You are not a corporation?

A. No, sir.

Q. Do you have a certificate of public convenience and necessity from the Illinois Commerce Commission?

A. No, sir.

Q. Do you file any rates with that commission or make [fol. 1434] annual reports to that commission?

A. No, sir.

Q. Do you file any rates with or make annual reports to the Interstate Commerce Commission?

A. No, sir.

Q. Have you been advised, Mr. Mechling, by the admiralty lawyer who represents you that in the business you are doing, you are not required to either file rates or obtain certificates or make reports about which I have asked you?

Mr. Enoch: Just a moment, I object to that.

Exam. Taylor: On what ground?

Mr. Enoch: I don't see what materiality that has. The Commission will be the best judge as to whether or not, if the question is material, this gentleman has complied with the laws of Illinois, when and if operating on the Illinois River.

Mr. Belnap: No question about that, Mr. Examiner. I am not inquiring of him whether he should do it. I mean, acting on the advice of the admiralty lawyer who represents him.

Mr. Day: I don't see the relevancy of that.

Mr. Enoch: I don't understand there is any question of criminal prosecution, as far as Mr. Mechling is concerned.

Mr. Belnap: Criminal prosecution about what?

Mr. Enoch: At the institution of the Illinois Commerce Commission; failing to comply with the Illinois law.

Mr. Belnap: I am asking him if he has had legal advice [fol. 1435] that he doesn't have to do these things.

Exam. Taylor: Read the question.

(Question read.)

Exam. Taylor: He may answer.

The Witness: I have had legal advice to that effect.

Mr. Belnap: To that effect?

A. Yes.

Q. Mr. Mechling, if any federal or state statutes require you to have certificates, file rates or make reports, are you willing to comply with that?

Mr. Enoch: I object to that. That isn't going to bear at all on what has been done in the past, or in so far as the propriety of applying these proportional rates out of Chicago on outbound ex-river grain; doesn't have a thing to do with it.

Mr. Belnap: I should think they would like to know what this man's business is and what he is willing to do.

Exam. Taylor: The witness may answer.

The Witness: Will you ask the question again, please?

Exam. Taylor: Read the question.

(Question read.)

The Witness: I am.

By Mr. Belnap:

Q. You are willing?

A. Yes, sir.

Mr. Belnap: Now, Mr. Examiner, I have some pictures of Mr. Mechling's equipment. He brought them here; he has no copies. He is quite willing to supply these so that they [fol. 1436] can be made part of the record, but we will not supply copies. He tenders these exhibits only in the event counsel will waive copies.

Exam. Taylor: Pass them to counsel; see what you have.

Mr. Belnap: They are pictures of towboats.

Mr. Enoch: I object to that. What bearing will it have? Will counsel explain that, please, before he insists upon the introduction of those pictures?

Mr. Belnap: I thought you would be interested in the man's business.

Mr. Enoch: I am if you and Mr. Mechling come over to my room——

Mr. Belnap: I will be glad to.

Mr. Enoch: And go into this thing in detail.

Mr. Belnap: I recall Mr. Cole's witness case some dispar-ing remarks on the type of equipment that was used to transport grain on these rivers.

Mr. Cole: Not disparaging.

Mr. Belnap: I thought they were quite disparaging, and I thought the Commission would like to look at the pictures.

Mr. Day: You are asking us to waive the Commission's rules?

Mr. Belnap: That is right.

Mr. Day: If you are so anxious to get the pictures in——

Mr. Belnap: If there is a refusal to waive, I will with-[fol. 1437] draw it.

Mr. Day: Well, withdraw them.

Mr. Belnap: You refuse to waive?

Mr. Day: Yes.

Mr. Belnap: I under those circumstances withdraw the offer of the exhibits, Mr. Examiner.

By Mr. Belnap:

Q. Have you here, Mr. Mechling, a true and correct copy of one of your bills of lading?

A. I have.

Mr. Belnap: Mr. Examiner, as to that, I have no copies available. I would like to offer it as an exhibit but with leave to supply copies to the parties.

Mr. Root: Your Honor, that is the thing you requested me, to get a copy for the record.

Exam. Taylor: Show the exhibit to counsel.

Mr. Belnap: I can't make a proper offer under the rules, if they refuse to waive copies.

Mr. Day: You say you are going to furnish copies of this; and I am not objecting to that procedure.

Exam. Taylor: It may be marked Exhibit 49, with the understanding that everybody, including the Examiner, parties will be given a copy.

Mr. Belnap: Very glad to.

Exam. Taylor: Well, it will be known as Exhibit 49.

(Exhibit 49, Witness Mechling, received in evidence.)

[fol. 1438] By Mr. Belnap:

Q. Mr. Mechling, as to the 17 barges which you own, are they confined exclusively to the barging of grain or do you handle any other commodities?

A. Well, I have handled some other commodities in them. However, I don't do it as a general practice, but I have handled some steel in them.

Q. Ordinarily, however, you use them exclusively for the barging of grain?

A. I do ordinarily, yes.

Q. When grain is barged in those 17 which you own, you use your own towboats?

A. Yes, sir.

Q. Do you also devote your towboats to the towing of grain in barges owned by others?

A. I do.

Q. That is for the Allied Barge Corporation?

A. Yes, sir.

Q. They have four barges, I understand?

A. Yes, sir.

Q. Are there any other companies for which you have—any other shippers for which you have towed grain in barges owned by the shippers?

A. No, I haven't towed any other barges owned by shippers. I have towed some barges owned by other barge lines.

Q. What other barge lines?
A. John I. Hay.
[fol. 1439] Q. Anybody else?
A. No. That is merely done as an interchange between the two barge lines, however.

By Exam. Taylor:

Q. By "interchange," you mean through reciprocity?
A. That is right. To take advantage of the boat that is in that territory. It isn't done very generally.

By Mr. Belnap:

Q. The rates which you assess when you barge grain, Mr. Mechling, are they shown in any printed document?
A. No, sir.
Q. In the form of a tariff?
A. No, sir.
Q. Do you have, however, a basis of rates which you make generally known to the shipping public?
A. I do.
Q. Are those rates named in cents per hundred pounds?
A. Per hundred pounds, yes, sir.
Q. I am speaking about rates for the handling of grain where you perform the complete transportation services.
A. Yes.
Q. Both the barge and towboat.
A. Yes, sir.
Q. Are the rates which you name applicable on corn, wheat, soy beans and oats?

Mr. Enoch: Just a moment, if he has this document——
[fol. 1440] Mr. Belnap: He said he didn't have a document.
The Witness: I don't have the document.

By Mr. Day:

Q. You quote these out of your head?
A. No, I don't quote them out of my head. Well, more or less, yes; I know what they are.

By Mr. Belnap:

Q. So does everybody else, don't they, Mr. Mechling?
A. Generally, I think.

Q. I asked you, are these rates applicable in the same amount in cents per hundred pounds on corn, wheat, soy beans and oats?

Mr. Enoch: I object to that. If he has any rates—first, let's see if he has any rates, and if he has any, what are they and on what do they apply; what is the service?

Mr. Belnap: Same question I ask, where they apply.

Mr. Enoch: You get the point.

Mr. Belnap: I am going to ask him all that, Mr. Examiner, but I have got to ask him something first, so I am going to ask him to what they apply; may I?

Exam. Taylor: Proceed.

The Witness: May I answer that question?

Mr. Day: You mentioned several kinds of grain. You did not include steel in there. He said he handled some steel and other commodities.

By Mr. Belnap:

Q. Let's comply with Mr. Enoch's suggestion. He would rather have you name the rates first.

[fol. 1441] Mr. Enoch: My request again?

By Mr. Belnap:

Q. What rates on grain do you maintain in Chicago from Morris, Seneca, Ottawa and LaSalle?

Mr. Enoch: I object, because there is no evidence here and no testimony by this witness that he maintains any rates.

Mr. Belnap: I ask him what rates he maintains.

Mr. Enoch: If you want to go into that question, let's see how many contracts out he has, in which there is some charge—I assume that he levies against the person or to the person for whom he performs the service. What is the use of talking here in a way we would talk as if these so-called figures were published in what is commonly understood as tariffs?

Exam. Taylor: He says he hasn't any tariffs. He says he knows these rates; he can tell them right out of his head.

Mr. Belnap: Let me ask him this question:

By Mr. Belnap:

Q. Mr. Mechling, have you throughout the past year maintained and made known to the trade generally rates

on grain in cents per hundred pounds from landings on the Illinois River to Chicago?

A. I have.

Q. Now, can you tell me what that rate has been during this past year from Morris, Seneca, Ottawa and LaSalle?

A. That rate has been 2¾ cents per 100 pounds.

By Mr. Day:

Q. On what?

A. On all grains.

[fol. 1442] Q. That is oats, beans, corn?

A. All grains and beans.

Q. Wheat?

A. That is right.

Q. Rye?

A. That is right.

Q. Barley?

A. That is right.

Mr. Belnap: I wanted to ask him that but I am much obliged, Mr. Day.

By Mr. Belnap:

Q. Now, from Peru to Chicago.

A. Peru to Chicago is 3¼ cents.

By Exam. Taylor:

Q. A hundred pounds?

A. A hundred pounds.

By Mr. Belnap:

Q. All the rates you are giving me now are per 100 pounds?

A. That is right. But I would like the privilege, if I can, of explaining that rate.

By Mr. Enoch:

Q. What is that?

A. I say I would like the privilege of explaining that rate, if I can.

By Mr. Belnap:

Q. All right, please explain it.

A. There isn't any house at Peru and the loadings there are loaded through more or less of a temporary arrange-

ment, and I charge half a cent higher there because the [fol. 1443] barges are held longer, than I do at LaSalle, which is practically in the same territory; but I wanted to say why that was. That is at Peru.

Q. That is a half a cent per hundred?
A. That is right.
Q. Now, from Hennepin to Chicago.
A. 3 cents.

By Exam. Taylor:

Q. These rates or charges are all in your own barges?
A. All in my own barges.

By Mr. Belnap:

Q. From Henry, Lacon and Chillicothe?
A. That rate is 3½ cents a hundred.
Q. How much from Peoria and Pekin?
A. 4 cents.
Q. How much from Havana?
A. 4½.

Mr. Enoch: Mr. Belnap, when you are talking about rates, mentioning Peru, Hennepin, these other points, do you refer to the rates which the witness described as those he takes out of his head?

Mr. Belnap: I refer to, as the witness described as taken out of his head, at times throughout the past season.

Mr. Enoch: When you ask him about maintaining rates?

Mr. Belnap: He has no published document in which these rates are shown, Mr. Enoch; he said that.

Mr. Enoch: When you asked about maintaining rates, [fol. 1444] do you refer to the rates which he says he takes out of his head?

Mr. Belnap: I don't know what kind of a question you are asking me.

Mr. Enoch: I can't understand how a man can be asked about maintaining rates when he has just previously answered counsel that all rates which he assesses he takes out of his head.

Mr. Belnap: I am sorry Mr. Enoch can't understand it. He has said for the past year and I am going to develop about the history of the rates. "Maintain", as I understand the word, means put in effect for a period of time,

have in effect for a period of time; and that the sense in which you answered my questions, Mr. Mechling?

The Witness: Yes.

By Exam. Taylor:

Q. The answer was yes?

A. Yes.

Mr. Belnap: Yes.

By Mr. Belnap:

Q. Are the rates you have just named, Mr. Mechling, lower than those which you assessed when you first started this business of barging grain to Chicago back in 1936?

A. Yes, sir, they are some lower.

Q. Do you recall what you charged by way of freight rate on this grain which you barged when you started?

Exam. Taylor: From what point?

By Mr. Belnap:

Q. Morris, for example.

[fol. 1445] A. When we started barging grain from Morris, we charged 4 cents a hundred.

By Exam. Taylor:

Q. In your barges?

A. In our barges.

Mr. Belnap: All these questions until I indicate, Mr. Examiner, are going to be asked about the services of his own barges; and I will go into that other situation, however.

By Mr. Belnap:

Q. And from Peoria?

A. Peoria was 5 cents at that time.

Q. And Havana?

A. 6 cents.

Q. What has brought about the reduction in the rates up the river at the present time?

A. Well, when we started, we had very small barges and the amount of grain was considerably smaller than it is now. That is, the amount of grain offered. And since

that time, the river has been improved to where there are better operating conditions, we are able to handle bigger tows, with the improved equipment, and of course the volume has a great deal to do with the actual cost of the transportation.

Q. Are your present rates profitable?

A. They are.

Q. How many people do you now employ?

A. 35.

Q. Now, will you describe your towing rate situation.

A. You mean in other peoples' barges?

[fol. 1446] Q. In other peoples' barges.

A. The only place where I do that to any extent is with the Allied Barge Corporation, and I have a rate with those people of a cent a hundred--or a cent a bushel.

Q. On what grains?

A. On all grains except oats and 8/10th cents a bushel on oats.

Q. That cent a bushel is approximately a cent and three-quarters per 100 and the 8/10ths is approximately 1.4 per 100, isn't it?

A. No, that isn't—oh, a bushel, you say?

Q. Yes, on corn. For instance, in corn, the cent a bushel is how much per hundred?

A. Per hundred?

Q. Yes.

A. I think it is about a cent and seven-eighths.

Mr. Enoch: It is all set up in your individual contracts, isn't it?

Mr. Belnap: I will ask him about these things, Mr. Enoch; I don't need your help.

Mr. Enoch: I object to any further questions, if these arrangements are set up in contracts, without having the contracts.

Mr. Belnap: I will ask him about the contracts, if you will let me get the other.

Mr. Enoch: I know, but you have gone ahead so far without saying anything about contracts.

[fol. 1447] Mr. Belnap: I can't cover everything at once. He is going to cover all the detail in his business.

Mr. Enoch: I object to any further questions, Mr. Examiner, about so-called rates and so forth if the terms under which these services are performed are set up in individual contracts.

Exam. Taylor: I will sustain that.

Mr. Belnap: May I hear that objection?

(Record read.)

Mr. Belnap: Mr. Examiner, would you withhold your ruling until I can say something?

Exam. Taylor: I will.

Mr. Belnap: I wanted to go completely into this man's business and his arrangements with shippers. Mr. Enoch has objected and predicated his objection, if they are set up in contracts, there is no evidence in the record. There will be before I have finished as to whether this man has any contracts except as to the Allied Towing Company. There is some evidence about that.

Exam. Taylor: That is the only thing he——

Mr. Belnap: That Mr. Enoch objected to.

Exam. Taylor: Yes. It was the contracts that he has with the Allied people that Mr. Enoch wants put in the record. If there are any rates stated in those contracts, they are the best evidence.

Mr. Belnap: Is that the objection, Mr. Enoch, just to [fol. 1448] the towing?

Mr. Enoch: Yes, if that was covered by a contract, I understand it is, I think you ought not refer to those so-called rates for services unless the contract is in evidence, and if these so-called rates to which you have referred——

Mr. Belnap: This is the towing.

Mr. Enoch: In connection with services performed, say for the Norris Grain Company or any other receiver of freight are covered by written contracts, I don't think that that rate should be put in evidence until the contract is also in evidence, because we don't want the rate questioned.

Mr. Belnap: I understand your ruling is, you will not consider evidence on any rates which are covered by specific contract unless the contract is in evidence?

Exam. Taylor: That is correct.

Mr. Belnap: I will proceed on that understanding, sir.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. Does the Co-operative Allied Grain Corporation also utilize your barge service when you provide the equipment?

A. There are times when they do.

Q. That has happened a number of times, has it not?
A. Yes.
Q. And when that happens, what rate do you charge?
A. I charge—in that case, I charge 2¾ cents a hundred; [fol. 1449] when they use my barge.

Mr. Enoch: I don't think counsel is complying with the ruling, if that is covered by contract.
The Witness: It isn't covered by contract.
Mr. Day: It is certainly contradictory to what the Allied people testified to.
Exam. Taylor: Let the record speak for itself about that.

By Exam. Taylor:

Q. Is this last statement made with respect to the movement of grain under contract?
A. Will you ask that again, please?
Q. This last statement you made in reply to Mr. Belnap's question. Is that with reference to transportation made under a contract?

By Mr. Belnap:

Q. That is the 2¾ cent rate.
A. That is in our contract with the Allied Grain Corporation; when they use our barges.
Mr. Belnap: I respect your ruling; this is not to be considered. I will get to these contracts in a minute. I understand that was your ruling and I am complying with it. We have already got evidence the 8/10ths of a cent and the cent in here. I understand those are to be disregarded as evidence in this case if they are in a contract, is that correct?
Exam. Taylor: That is correct.
Mr. Belnap: And I will observe that ruling in briefing the case, naturally.
Mr. Cole: Mr. Examiner, Mr. Belnap now two or three [fol. 1450] times has said, "Just a minute, I am going to get to these contracts; just a minute, I am going to get to these contracts." I think he has filled up about ten pages with information we asked be withheld until he got the contracts first.
Mr. Belnap: If there are any.
Mr. Cole: Now, see, right now he says, "If there are any contract." He is getting his whole record made be-

fore he divulges if there are any contracts. We maintain if there are any contracts, the contracts are the best evidence, so necessarily we are going to have the contract information first.

Mr. Belnap: I will get in the order in which I was going to put it in.

Exam. Taylor: I wish you would, Mr. Belnap.

By Mr. Belnap:

Q. Do you presently have a contract with the Allied Grain Corporation?

A. I do.

Q. That is the contract to which the previous witnesses testified about?

A. That is right.

Q. You have been here and heard their testimony, have you not?

A. I do not recall being here when that testimony was given.

Q. Do you presently have a contract with anybody else?

A. No, sir.

Q. You contend your bill of lading is a contract?

A. That is right.

Q. Which you issue on individual shipments?

[fol. 1451] A. That is right.

Q. And a copy of it has been made a part of the record.

Exam. Taylor: Just on grain moved in his own barges.

Mr. Belnap: Just on grain moved in his own barges. Is that clear enough for you?

Mr. Cole: Not quite.

Mr. Belnap: You get him on cross in a minute.

By Mr. Belnap:

Q. Mr. Mechling, are you willing to handle grain for any shipper from any of these landings at the rates and charges you have recited that you maintain during this past year?

Mr. Enoch: I object to that.

Exam. Taylor: On grain in his own barges.

Mr. Belnap: On grain in Mr. Mechling's barges.

Exam. Taylor: Yes.

Mr. Belnap: Yes.

Mr. Day: I think it is irrelevant and immaterial. I join in the objection.

Exam. Taylor: On what ground?

Mr. Day: It is irrelevant, what he is willing to do. The question and the only question before this Commission conceivably is how has he been operating, how is he operating today; not what he is willing to do. The Commission can't decide this case on promises.

Exam. Taylor: Will you reframe your question to meet [fol. 1452] that objection, Mr. Belnap.

By Mr. Belnap:

Q. Have you been willing to handle grain for any shipper who would tender it to you during this past year at the rates that you stated as rates per hundred pounds for complete transportation services?

Mr. Day: That doesn't meet the objection. I object to it.

Exam. Taylor: First, I should think the question would be, have you done it?

Mr. Day: That is it.

By Mr. Belnap:

Q. Have you, Mr. Mechling?

A. I have.

Q. Every shipper who offered you grain?

A. I have.

Q. Have you, in fact, since you have been in this business, served every river bank elevator on the river at these Illinois River landings between Havana and Chicago, or are there some you haven't served?

A. I think there is one elevator—let me see. There is only one elevator that I have any question about saying yes, and that is the Continental Elevator at Havana. I don't know whether we have towed out of there with our own barges or not, but every other elevator, we have.

Q. Will you take each of these landings up in turn and tell the shippers for whom you have transported grain?

[fol. 1453] A. You mean the different elevators?

Q. Yes, the elevators you have served, who the shippers are from those points.

A. Since 1930, you mean? That is, since I started towing grain?

Q. Let's take the last couple of years. Let's get up to a recent period here.

A. Well, the last couple of years, I have served the Norris Grain Company at Havana and I have served the Dewey Grain Company at Pekin, that is the W. W. Dewey Grain Company and the Norris Grain Company at Pekin; Continental Grain Company at Peoria; the Norris Grain at Chillicothe and the Terminal Grain Company at Lacon.

By Mr. Enoch:

Q. What is that last one?

A. Terminal Grain Company. That grain has been handled out of the Lacon elevator for both the Continental and the Norris Grain Company. They buy it from the Terminal Grain Company and I tow it for whoever orders a barge down there.

By Exam. Taylor:

Q. In your own barge?

A. In my own barge. I just wanted that correct. Norris Grain Company at Henry——

By Mr. Cole:

Q. Henry?

A. Henry. Norris Grain Company at Hennepin, and the Continental Grain Company at LaSalle. Norris Grain Company at Ottawa. Allied Grain Corporation at Seneca; [fol. 1454] Allied Grain Corporation at Morris and Finnegan Grain Corporation at Morris.

By Mr. Belnap:

Q. Outside of the Havana elevator or the Continental Grain Company, all of the elevators are on the Illinois River from which grain can be discharged from the elevators?

A. There are two more barges——

Q. Two more barges?

A. Or two more elevators; one at Naples and one at Montezuma. That grain so far has always gone down the river and not come to Chicago.

Q. Now, have you also handled grain for shippers who had no elevator facilities?

A. I have in one or two occasions.

By Mr. Enoch:

Q. Will you tell us when that was?

A. The one or two occasions?

Q. Yes.

A. I can't just give you the date. It was this fall. I would say along in the early part of November, I handled a carload out of Depue for a man by the name of Seward. He built a little landing there. And earlier in the summer, I would say along in July, I handled a barge load out of Seneca.

By Mr. Belnap:

Q. Who was that for?

A. I was just trying to—Hogan.

By Mr. Root:

Q. Joe Hogan?

A. Yes. I understand he furnished the grain. I don't know just how that was handled. I understand he furnished the grain.

[fol. 1455] Q. It was loaded into your barges?

A. It was loaded into our barges.

Q. And through an elevator?

A. Loaded from the bank into the barges through a temporary loading.

Q. Has your barge line handled the bulk of grain brought into Chicago this last year by barge?

A. I would say they have, yes, sir.

Q. You specialize in that business, do you, Mr. Mechling?

A. Yes, sir, that is practically——

Q. There are some other barge companies who handle some grain in here?

A. Oh, yes, there are some other.

Q. Would you identify for the record who they are and something about the company, how big a company, how large a company it is.

A. John I. Hay Company have handled grain on the river for the past two or three years. They haven't specialized in it the same as I have. They have handled it along with their regular towing arrangements, and they tow from New Orleans up to Chicago. They have a long-distance towing program. And the Lawrence Transportation Company have

handled grain both from Pekin and the Hennepin canal points into Chicago, and on several occasions this grain goes to Pekin, I think, from Hennepin canal.

[fol. 1456] Q. How about the Waterway Transportation Company at St. Louis?

A. The Waterway Transportation Company at St. Louis do some. They towed some grain up here this fall, I don't know how much. I know they towed several barges into Chicago.

By Mr. Enoch:

Q. From St. Louis?

Mr. Day: From St. Louis?

A. From St. Louis; I understand they came from St. Louis. I don't have any particular connection with them but I understand that is where it came from.

By Mr. Belnap:

Q. Are your rates the same or different——

Mr. Day: Just a minute, has he finished the answer to your last question?

Mr. Belnap: I thought he did.

The Witness: I have, yes, sir.

By Mr. Day:

Q. You have given us all these barge lines operating there?

A. Yes, sir.

Q. And Mr. Belnap in his question asked for you to identify them for us. Have you done that?

A. That is all the barge lines I know of that are towing grain into Chicago. There are some other barge lines that are towing grain down the river; I don't know whether you want that or not.

Q. Which of these barge lines are Norris Grain Company?

A. None of them.

[fol. 1457] Q. You didn't mention Norris Grain Barge Line.

A. They don't have a barge line.

Q. They don't have their barges?

A. They have one barge they have used in connection—the man has been using in connection with mine.

Q. Do they give it a name?

A. IRP No. 3.

Q. Norris Grain IRP 3?

A. No, IRP No. 3 is all that there is on the barge.

Q. What does the IRP stand for?

A. Illinois River Packing Company.

Q. That is the name they operate under?

A. Yes, and that barge has been leased to me and I use it in my regular operation, but it is really under lease to me; in all sense of the word, I think, as far as the operations are concerned, my barge.

Q. Norris doesn't have anything else——

A. No.

Q. In the way of river equipment?

A. No.

By Exam. Taylor:

Q. Is that on- of your 17?

A. No.

Q. Is that additional?

A. That is an additional barge. These 17 I mentioned are barges I own.

[fol. 1458] By Mr. Day:

Q. How about Continental?

A. What about that?

Q. Continental Grain Company. Do they have barge operation?

A. They own no barges that I know of.

Mr. Belnap: You just asked if he had answered my question, didn't you?

Mr. Day: Yes, sir, your question contemplated that he did tell us about these barge lines.

Mr. Belnap: If they don't have one, he can't tell you about them, Mr. Day.

The Witness: I did tell you all the barge lines that are operating on the Illinois River.

Mr. Belnap: Wouldn't you just as soon wait for cross-examination?

Mr. Day: If you would prefer that. I thought as long as all this connected, it would be convenient——

Mr. Belnap: Then you go ahead if you wish.

Mr. Day: No, I would just as soon wait. Go ahead.

By Mr. Belnap:

Q. Does the John I. Hay Company maintain the same rates you do, Mr. Mechling?

Mr. Enoch: I object to that unless he knows about whether the John I. Hay Company has any rates.

By Mr. Belnap:

Q. Do you compete with John I. Hay Company, Mr. Mechling?

A. Yes, sir.

Q. Do you make it your business to find out what your [fol. 1459] competitor is charging?

A. It is my understanding that they charge the same rates as I do.

Mr. Enoch: I move that the answer be stricken out.

Mr. Belnap: Mr. Examiner, I can't quite get—he is competing with a company and he knows what his competitor is doing.

Mr. Enoch: No objection to that. There is no objection to that answer.

Mr. Belnap: And he understands that the rates they charge——

Exam. Taylor: The answer will be allowed to stand for such value as it may have. Off the record.

(Discussion outside the record.)

Mr. Belnap: You may cross-examine.

Mr. Cole: May I ask? I have only got a few.

Exam. Taylor: Mr. Cole:

Cross-examination.

By Mr. Cole:

Q. Mr. Mechling, among the people that you testified that you hauled for were Norris Grain Company, as I took it down, Dewey, is that the right name?

A. W. W. Dewey Company.
Q. W. W. Dewey Company?
A. W. W. Dewey Company.
Q. At Peoria, Continental Grain Company?
A. That is right.
Q. The Terminal Grain Company, is that it?
A. I explained in that that I didn't tow directly for the Terminal Grain Company, but it came out of their house.
[fol. 1460] Q. Do you know who it was for?
A. Yes, it was for both Norris Grain and Continental.
Q. That is the Terminal was simply the house you got it out of?
A. That is right.
Q. But that was for either Continental or Norris?
A. That is right.
Q. You transferred for Norris Grain Company, Dewey's Grain Company——
A. W. W. Dewey Grain Company.
Q. Continental Grain Company, Allied—what is the name of that?
A. Allied Grain Corporation.
Q. And the Finnegan Grain Corporation?
A. That is right.

Exam. Taylor: Isn't it the Allied Co-operative Grain Corporation?

By Mr. Cole:

Q. This Allied Grain Corporation, is that what you referred to as the Allied——
A. I think we had better straighten you out. The contract that I have is with the Allied Barge Corporation.
Q. So you transport for the Allied Barge Corporation?
A. I think you had better straighten that out right now so there won't be any misunderstanding.

By Mr. Belnap:

Q. You have no contract at all with the Allied Grain [fol. 1461] Dealers Corporation?
A. No, sir.
Q. Just the barge corporation?
A. That is right.

By Mr. Cole:

Q. Now, is there any other company or firm that has been using water transportation along the Illinois River other than these five firms that we just referred to?

Exam. Taylor: That is, that is being handled by his company.

Mr. Cole: Oh, no, that he knows about; whether he has handled it or not.

Exam. Taylor: I want to get that straight.

Mr. Belnap: Have you got Hogan down there?

Mr. Cole: I got Norris, Dewey, Continental, Allied and Finnegan.

Mr. Belnap: He talked about Hogan and Seward.

Mr. Cole: Hogan and Seward.

Mr. Day: He said he handled one load——

Mr. Cole: Wait a minute, I will get that.

By Mr. Cole:

Q. In your experience there along the river, you are in the barge business?

A. Yes, sir.

Q. Is there anybody else that you know of that is handling grain from the Illinois territory to Chicago, shipping any except Norris, Dewey, Continental, Allied, Finnegan, Hogan [fol. 1462] and Seward?

A. Now, there are times when grain will be bought by Cargill, for instance.

Q. By Cargill?

A. By Cargill. And they will buy, for instance, a couple of barge loads of grain, maybe out of Morris elevator at Pekin.

Q. You mean when Cargill buys grain, will Cargill buy grain from either Norris, Dewey, Continental, Allied or Finnegan?

A. Yes.

Q. That is it.

A. And they will wire us they want to go down there and get that barge of grain.

Q. Yes.

A. They may wire me, they may wire John I. Hay or anybody that has got barges. It is up to them then to provide the towing of that grain.

Q. I understand. Now, this Mr. Hogan that shipped some grain down the Illinois River, you said he was one of the men that loaded your barge or one of the barges from a bank where there was not any elevator?

A. That is right.

Q. Did you ever haul any for Mr. Hogan? Other than that one barge load, I mean?

A. No.

Q. Do you know whether Mr. Hogan has ever shipped [fol. 1463] any other than that one barge load?

A. I don't know.

Q. This Mr. Seward, is he another man who loaded from the bank?

A. That is right.

Q. Have you ever heard of Mr. Seward shipping any other over the Illinois waterway?

A. I haven't heard of it.

Q. Now, if we take Mr. Hogan and Mr. Seward away——

Mr. Belnap: I don't want you to do that, though.

Mr. Cole: Well, just for the minute.

By Mr. Cole:

Q. Now, of the remaining five, Norris, Dewey, Continental, Allied and Finnegan, how do they rate in the amount of grain handled for each one of the five? Which would you say handled the most?

Mr. Belnap: Now, Mr. Examiner, we are getting into a relation between the carrier and those he serves.

Mr. Cole: No.

Mr. Belnap: It seems to me we are.

Mr. Cole: I am not asking these questions at all for that, Mr. Examiner, and I think the Examiner will realize why I am asking these questions.

Mr. Belnap: You haven't explained it to me.

Mr. Cole: You know blessed well I am. Shall I explain?

Exam. Taylor: Do you require an answer to that?

Mr. Belnap: I would like to have it explained. I don't [fol. 1464] know whether Mr. Mechling, as I said, wants to talk about his relation between himself and the people he does business with or not, how much he does for this and how much he does for that.

Mr. Cole: I am not talking about how much he does for this or that.

Mr. Belnap: I would like to have the purpose of the question explained.

Mr. Cole: The purpose of the question is just this—may I explain off the record so as not to clutter it up?

Exam. Taylor: Yes, off the record.

(Discussion outside the record.)

Exam. Taylor: Proceed.

By Mr. Cole:

Q. Now, Mr. Mechling, of the five shippers, would you give me the list in the order of their substantial movement; naming first the one that has the most substantial shipments.

Mr. Belnap: Mr. Cole, wouldn't it suffice for you purposes for him to say which are substantial, which are not; if there are some which aren't substantial shippers. I don't think it has any relevancy at all, Mr. Examiner.

By Mr. Cole:

Q. Do all of these five ship in approximately the same quantities over the period of a year?

Mr. Brown: To Chicago.

By Mr. Cole:

Q. To Chicago.

A. Will you read those particular five that you refer to?

[fol. 1465] Mr. Belnap: You left out Cargill, I think.

By Mr. Cole:

Q. I am referring to Norris, Dewey, Continental, Allied and Finnegan. Do all of those ship about the same quantity in the course of any period, say like a year or a season?

A. Well, I would say that they—have you got Cargill in there?

Q. I have got Cargill over on the side.

A. You haven't got him in the——

Q. Not in the five, no.

A. I would say that they are all pretty much substantial shippers, yes.

Q. Now, out of the five, which one ships the smallest amount?

Mr. Enoch: You mean to Chicago, for instance?

Mr. Cole: Oh, yes, everything I am talking about, I am talking about Chicago.

Mr. Belnap: Mr. Examiner, I am objecting to the question. I don't think which is the biggest and which is the least bears on any issue of the case; and further, the witness is obviouslly not in a position to state as to the quantities handled for any shipper, other barge lines. So a picture for his own line would certainly not be helpful, even if it was important to develop this information Mr. Cole is going after.

Mr. Cole: For the benefit of the record, may I explain this, as I explained off the record. My purpose here, as you [fol. 1466] can well see, is to attempt to establish just what public interest we have. I am trying to see how wide a public interest we have, and I finally have it limited to the fact that there are five shippers on the Illinois waterway; Norris, Dewey, Continental, Allied, Finnegan, plus a possible sixth, Cargill, who, the witness has told me, handled his goods from either one of the other five. He only moves the goods of the other five.

Mr. Belnap: You misunderstood him.

Mr. Cole: I will go back and be sure. Now, what I am trying to do is to see how substantial each one of these is.

Exam. Taylor: Well, to save time, the witness may answer if he knows.

The Witness: I can't say just the relative amount that each one shipped and I can't say offhand which one shipped the least.

By Mr. Cole:

Q. Well, would you say that of those five, Norris, Dewey, Continental, Allied and Finnegan, they would ship approximately the same amount of grain over a period of time and all of that would be substantial, each of them would be substantial individually?

A. Each one would be a substantial amount; not just a few barge loads but I mean——

Mr. Enoch: I wonder if the witness understands you mean movement of grain to Chicago.

[fol. 1467] By Mr. Cole:

Q. Do you understand every question I asked you from the time I started asking you questions referred to movement to Chicago?

A. Yes, sir.

Q. Now, this Cargill we referred to, did you tell me or did I misunderstand that Cargill when handling grain was buying that grain from one of the five firms I referred to?

A. I don't know how that transaction is handled.

Q. You don't know?

A. There isn't any reason why I should or any way that I would know. We just have orders to go down there and get grain and take it some place.

Q. Have you handled much grain for Cargill?

A. Not a great deal, no.

Q. Does Mr. Cargill handle much grain along the river?

A. I would say he handles quite a little, yes.

Q. Would you say Mr. Cargill handled the same substantial quantity that was handled on the river by Norris, Dewey, Continental, Allied and Finnegan?

Exam. Taylor: Combined or individually?

By Mr. Cole:

Q. Individually. Did he handle as much as any one of those five firms?

A. Oh, I would say he handled about as much as Dewey did.

Q. You say he handled about as much as Dewey did?

A. Of course, I don't want to be quoted as being any authority on that because I don't know. I don't tow it all.

[fol. 1468] Q. Now, in your towing experience, to back up to be sure that I haven't overlooked anything, have you heard now of any other shipper of grain on the Illinois watersay moving grain to Chicago outside and beyond these people, Norris, Dewey, Continental, Allied, Finnegan, Hogan, Seward and Cargill?

A. Not in recent years, no.

Mr. Cole: I thank you. That is all I have.

Exam Taylor: I think we had better adjourn. Adjourn at this time until 9 o'clock tomorrow morning.

(Witness excused.)

Mr. Belnap: Do you want Mr. Mechiing back in the morning?

Exam. Taylor: Yes, he is not excused. We haven't finished with him.

9 o'clock tomorrow morning, same room.

(At 4:50 o'clock P. M., January 18, 1940, hearing adjourned to 9 o'clock A. M., January 19, 1940.)

[fol. 1469]

Morrison Hotel,
Chicago, Illinois,
Friday, January 19, 1940.

Met pursuant to adjournment at 9:00 o'clock a. m.
Before: R. G. Taylor, Examiner.
Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right, gentlemen: come to order.

A. L. Mechling, resumed.

Direct examination (continued):

Exam. Taylor: Had you finished, Mr.——

Mr. Belnap: Before Mr. Enoch inquires, there is one matter in Mr. Mechling's testimony which should be straightened out in the record; and that is as to the barge which he said is under lease to him, which he referred to as being owned by Norris. In making a statement similar to that, Mr. Mechling, did you correctly state the fact?

The Witness: No, that was wrong; the barge is actually owned by the Illinois River Packet Company.

By Mr. Belnap:

Q. And it is under lease to you?

A. That is right.

[fol. 1470] Q. So far as that barge has been used in the transportation of Norris grain, you have assessed, have

you not, your regular rate that you have described in the record?

A. That is right. That barge is chartered to me; the same rate that I charge for my barge is charged on that barge; just merely the fact that they were not using it when I had an opportunity to use it.

Mr. Belnap: That is all.

Cross-examination.

By Mr. Enoch:

Q. Who owns the Illinois River Packet Company?

A. Well, that is owned by a group; I cannot tell you just who owns that, or who the officers are.

Q. Who are some of the officers?

Mr. Belnap: Do you know, Mr. Mechling?

The Witness: No, I don't know.

Mr. Day: He was going to tell, until Mr. Belnap headed him off.

By Mr. Enoch:

Q. Who owns the Illinois River Packet Company?

A. I don't know.

Q. With whom did you deal in your business arrangements with the Illinois River Packet Company?

A. I dealt on that, to lease it, with the Illinois River Packet Company.

Q. What individual?

A. And I turned the lease agreement in to the Norris [fol. 1471] Grain Company; and just who handled it there, I cannot say.

Q. Well, it was some officer or employe of the Norris Grain Company, wasn't it?

A. Well, I couldn't say for sure that they signed it. It has been quite a while since that transaction was made.

Q. Well, who was the man; what was his name?

A. Well, I just said that I don't remember who signed the charter.

Q. Where was it signed?

A. Well, I cannot tell you that; I mailed it in to Norris, and where it was signed I cannot tell you.

Q. You mailed it in to Norris?

A. Yes, sir.

Q. When was that, about?

A. Oh, that has been, I think about in 1937; I cannot tell you the date.

Q. Now, when you say you mailed it to Norris, do you refer to the document which covered your negotiation—the consummation of your negotiations for these barges with the Illinois River Packet Company?

A. That is what I am referring to, yes.

Q. And how many barges did you take over from the Illinois River Packet Company?

A. Just one.

Q. Did you get any other equipment of the Illinois River [fol. 1472] Packet Company?

A. No, sir.

Q. What happened to the other barges owned by that company?

A. The other barges owned by that company were old wooden barges, and they are not in service; they have been condemned for age, and the insurance company would not carry insurance on them.

Q. Is that lease which you turned in to Norris & Company in 1937 still in existence?

A. Yes.

Q. Have you had any financial assistance from any of the grain concerns?

A. Yes, I have; I borrowed some money at one time on my personal note.

Q. If you borrowed it from a grain concern, will you state from whom that was borrowed?

A. That was borrowed from Norris Grain Company.

Q. Mr. Mechling, some years ago you had a partner, didn't you?

A. That has been quite a few years ago; not since I have been in the grain business. That is when I was in the sand and gravel business, I did have a partner.

Q. And that partnership was dissolved?

A. Yes, sir.

Q. And since that you have been operating as an individual?

A. That is right.

[fol. 1473] Q. You have no partner?

A. No, sir.
Q. Your son is not a partner?
A. No, sir; he is not.
Q. He is one of your employes?
A. He is one of my employes.
Q. You formerly resided at Sheffield, Illinois?
A. Yes, sir.
Q. And then moved your business to Joliet?
A. Yes, sir.
Q. Where do you reside in Joliet?
A. At 523 North Raynor Avenue, in Joliet.
Q. And where is your business place?
A. At my house; I have an office at my house.
Q. And some 14 or 15 or 16 of your 37 employes, to whom you referred yesterday, are your office help?
A. What is that?
Q. Some 14 or 15 or 16 of the 37 employes to whom you referred yesterday are your office help?
A. No, sir; not that many.
Q. How many?
A. One, besides myself.
Q. Is that your son?
A. No, that is the girl that I have working for me.
Q. Do you recall yesterday your testimony that the only [fol. 1474] contract in existence today, to which you are a party, is the contract with the Allied Barge Corporation?
A. Yes, sir.
Q. That is the situation today?
A. That is the situation today.
Q. Is it not true that you have had term contracts in the past for the transportation of grain?
A. I have had; yes, sir.
Q. And how recently?
A. In 1937, for the season of 1937.
Q. And how about the season of 1938?
A. There was no contract in force for the season of 1938 or 1939.
Q. Was there an understanding that the 1937 contract would cover the 1938 operations, by letter, or verbal understanding?
A. No, we just continued on, on the same basis, but never renewed the contract; and there was never any conversation or agreement in 1938 or 1939.

Q. Were there more than one of those?

A. No, just one.

Q. Was that with the Norris Grain Company?

A. That is right.

Q. Have you any title to, or lease of, any real or personal property in Havana, Illinois, or its vicinity?

A. Havana, Illinois—no, sir.

[fol. 1475] Q. Pekin, Illinois?

A. No, sir.

Q. I am asking now as to each one of these points that I will name; any title or lease of, or interest in, any real or personal property at these points that I will name, or in their vicinity; you understand that?

A. Yes.

Q. Peoria?

A. No, sir.

Q. Chillicothe?

A. No, sir.

Q. Lacon?

A. No, sir.

Q. Henry?

A. No, sir.

Q. Hennepin?

A. No, sir.

Q. LaSalle?

A. No, sir.

Q. Ottawa?

A. No, sir.

Q. Seneca?

A. No, sir.

Q. Morris?

A. No, sir.

[fol. 1476] Q. Joliet?

A. Yes, sir.

Q. I mean along the river?

A. Why, this property there.

Q. But along the river?

A. No, sir.

Q. Chicago?

A. No, sir.

Q. Have you any such interest as I have indicated at any point along the river, other than Joliet?

A. No; I own property in Joliet, and that is all.

Q. And the property to which you refer in Joliet is your residence?

A. That is right; and I also use it as my office.

Q. Yes; now, Mr. Mechling, I am referring to the grain which you bring to Chicago: from what point along the Illinois River do you originate, you personally with your barges, the largest amount of the grain?

Exam. Taylor: His own grain, are you speaking of?

Mr. Enoch: No; did I say that—read that.

(Question read by the reporter.)

Mr. Enoch: Strike that question, please. I am speaking of the corn brought to Chicago by the A. L. Mechling Barge Line; from what point does the largest amount of that grain originate?

[fol. 1477] The Witness: I would say from Morris.

By Mr. Enoch:

Q. And from what point was the next largest amount——

A. Can I elaborate a little bit on that?

Q. Yes.

A. However, that may change; because there is elevators built this year that may change that picture. But I am referring, when I answered that, to what has been. And to take it over this whole season, I think I am correct in saying that Morris has furnished a larger volume than any other town along the river.

Q. What point would be next?

A. Well, I can't say from there on; I am not sure. All the rest of the points, I would say, are about equal.

Q. Would you say that? Would you say that Pekin was equal to Seneca and LaSalle?

A. No, I wouldn't say that; I would say Seneca, Ottawa, and LaSalle were about equal.

Q. Now, as a matter of fact, when you name those four points you have named about all of the points from which this grain that you handle is really handled to Chicago, in volume?

A. Oh, no; no.

Q. Can you give me the amount of grain that you handled from 1939 from Havana to Chicago?

A. No, I cannot. I could have, if I had known this was [fol. 1478] going to be asked me. But it will take some time to get those figures together.

Q. You have handled a barge of grain from Havana to Chicago?

A. Oh, a good many of them; we did quite a substantial business down there.

Q. Pekin?

A. Yes.

Q. How many?

A. I do not pretend this to be accurate, now; I will say around 10, 12 barges.

Q. Now, in connection with that corn out of Pekin, that was, you said yesterday, via Dewey?

A. Dewey and Norris both ship out of Pekin.

Q. Now, isn't it a fact that that situation at Pekin, insofar as Dewey is concerned, is about the same as you described at Lacon, where you mentioned the Terminal Grain Company and then said that after all that was really the Continental and Norris, because the Terminal Grain Company sold for either one of those two people?

A. No, that is not the same; the Dewey people themselves sells their grain to Chicago, and they have it transported.

Q. Henry?

A. I would say Henry, Lacon and Chillicothe and Hennepin are about the same place when it comes to volume; probably a little bit heavier at Hennepin.

[fol. 1479] Q. But Henry, Pekin, Chillicothe, Lacon, and Hennepin, are all very small, compared with the shipments out of Morris?

A. Well, we are down there pretty near every week for a cargo of grain.

Q. Is my statement correct, or not?

A. I would say they are smaller, but I would not say that they are not to be considered at all. They are quite good producing stations.

Q. All right; now, take Morris; compare the amounts of grain that you yourself, the A. L. Mechling Barge Company originates at Morris; compare that with all of the grain, speaking for the year 1939, that you originated at Havana, Peoria, Chillicothe, Lacon, Henry, and Hennepin; it would be a good deal less than that, wouldn't it?

A. Half of all that was originated, you mean?

Q. At Morris?

A. That those small stations would be half of what was originated at Morris; is that what you mean?

Q. Less than half of what was originated at Morris?

A. Well, I couldn't answer that.

Q. I think you stated yesterday that you have had no contact whatever with the Illinois Commerce Commission?

A. No, sir; I do not.

Q. Mr. Belnap asked you about legal advice you obtained, and you said that you had; can you tell me when [fol. 1480] you got that advice?

A. Oh, just recently.

Q. Do you mean within the last two or three months?

A. Yes.

Q. Since this case arose?

A. Yes; that has been since this case arose.

Q. Was that a written opinion?

A. No, it was not.

Q. But you describe your operations, did you, to your lawyer?

A. I did; yes, sir.

Q. And got his advice on that?

A. That is right.

Mr. Enoch: That is all I have.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. Mr. Mechling, your original water operations, as I understand it, were on the Hennepin Canal?

A. Yes, sir.

Q. You operated out of Sheffield at the time?

A. I lived at Sheffield; yes, sir. That was my base of operations.

Q. And you handled sand and gravel?

A. Yes, sir.

Q. Between what points?

A. We had a plant located on the canal right of way, and we handled it through the canal down southwest, Colona [fol. 1481] toward Rock Island. And then we went up the feeder part as far as Rock Falls, on the feeder; and all points in between. We sold road gravel, for gravel road purposes.

Q. Those operations were about 100 miles west of Chicago, were they not, roughly?

A. About 150 miles west of Chicago.

Q. I mean Joliet.

A. 100 miles west of Joliet, I would say, yes.

Q. And from there you came to Joilet and started operations on the Illinois River?

A. I came to Joilet about a year and a half ago.

Q. But you started your Illinois River operations somewhat earlier than that?

A. Yes, sir; in 1930.

Q. And at that time you did not have this partner that you spoke of?

A. No; I operated the last three years in the gravel business alone.

Q. That was up to what time?

A. In 1930.

Q. And in 1930 you began handling grain?

A. Yes, sir.

Q. Between what points?

A. Between Hennepin Canal stations; there was four elevators on the Hennepin Canal,--and Pekin.

[fol. 1482] Q. And how long did you continue in that business?

A. I continued in that until 1935.

Q. The first part of the year?

A. No, we operated all the season of 1935.

Q. And after that you started operating to the north and east, did you?

A. Yes; that was about the time that the Illinois River was opened up to Chicago; and that changed the picture in the river business.

Q. That was when, in 1936?

A. We brought our first barge load of grain to Chicago in the fall of 1935.

Q. You say 'we brought;' to whom do you refer by that?

A. Well, my outfit; my outfit.

Q. What was that outfit?

A. A. L. Mechling Barge Line at that time.

Q. You operated then as now, under the same name?

A. The same name; yes, sir. When I was in the gravel business it was A. L. Mechling Gravel Company.

Q. Did you bring your sand and barges up the river for operation into Chicago, when you changed your method of operation?

A. No, sir.

Q. You disposed of those, did you?

A. That is right.

Q. And bought different equipment?

[fol. 1483] A. All I did at that time was toll barges owned by the Turner Hudnut Grain Company.

Q. What time was this—fix that time, will you, with reference to this company?

A. From 1930 until 1935.

Q. Was this first barge that you brought into Chicago the business of the Turner-Hudnut Grain Company?

A. No; at that time the Turner Hudnut Grain Company sold out to Rosenbaum Corporation, early in the year of 1934; and then I continued to work for the Rosenbaum Corporation.

Q. And this first load you brought into Chicago was for the successor of Turner Hudnut Company?

A. Yes, sir; that is correct.

Q. When you began to haul grain into Chicago, how many barges did you own?

A. I didn't own any at that time; that is, any grain barges. I owned some gravel barges.

Q. When did you first acquire barges for the handling of grain?

A. In 1937.

Q. The early part of the year, or the latter part?

A. About the middle of the year, I would say; the middle of the season.

Q. How many did you obtain at that time?

A. I bought one at that time.

Q. Was that a new one?

[fol. 1484] A. That was a new barge; yes, sir.

Q. And have you still got it?

A. Yes, sir.

Q. What is the capacity of that barge?

A. 400 tons.

Q. In bushels, how would you express it?

A. About 13,000 bushels.

Q. When did you acquire the next barge?

A. I am going to have to change my testimony there; that first barge was bought about the middle of the year 1936.

Q. All right.

A. And the second barge, the mate to that, was bought in 1937.

Q. In the middle of the year?

A. Toward the latter part of the year; I would say along in September.

Q. What did you pay for each of those barges?

A. Those barges cost me approximately $9,000 apiece.

Q. When did you get the next one?

A. I bought two barges, then, in 1937.

Q. After September?

A. Yes, that was rather late in the fall, as I recall it. Those were used barges.

Q. And you got these two at the same time, did you?

A. Yes.

Q. What did you pay for them?

[fol. 1485] A. As I recall it—I could have looked all this up, but I did not. It has been sometime ago, and I do not just remember all those figures. But it was in the neighborhood of $3,000 for the two of them.

Q. What was their capacity?

A. Their capacity was about 17,000 bushels.

Q. Each?

A. That is right.

Q. And the one purchased in September of 1937 was what capacity barge?

A. That was the same as the first, a duplicate of that first one.

Q. 13,000 bushels.

A. That is right.

Q. Now, to shorten this up a little, how many barges did you own the 1st of January, 1939?

A. The 1st of January, 1939?

Q. That is approximately a year ago.

A. I owned 11 barges.

Q. That does not include the one you have leased from the Illinois River Packet Company?

A. No; no, I do not pretend to own that.

Q. And you acquired six, then, during the last year, did you?

A. Yes; I acquired seven and sold one; so it amounted to that.

Q. And are you able to say how many of these 17 barges [fol. 1486] that you own at present were purchased new?

A. Well, two of those were purchased new.

Q. That is, the first two you bought?

A. The first two I bought were new.

Q. The others were bought second hand?

A. The others were about ten years old.

Q. How many tow boats did you own the 1st of January, 1939?

A. The 1st of January, 1939, I owned four tow boats.

Q. And you still own four, as I understand?

A. But I want to explain that a little bit: two of those I own now. I just wonder now, to get them straight on this as we go along, if we had not better name those at first, give you the horse power, so if you want it or I want it I can identify them. Do you want that?

Q. I think it is sufficient; I have seen the names of them, and I think it is sufficient to say that there are four of them, and to say that you have not changed the number in the past year.

A. I have sold two of the small ones, and built two big ones in the past year; so that I still own four boats, but they are not the same four.

Q. You still own the Mary Ellen, the Gladys M, Harold Grant, and the Junior?

A. I still own the Mary Ellen and the Gladys M, but I have disposed of the Harold Grant and the Junior.

[fol. 1487] Q. Purchased two other ones in their place?

A. I built two others, new.

Q. Are the two you built the same capacity as the Gladys M, and the Mary Ellen?

A. No, they are larger than either one of those.

Q. They are larger?

A. Yes, sir.

Q. Now, in addition to this barge you leased from Norris, do you lease any others?

A. No, sir.

Q. Under the terms of this lease with Norris, what do you pay them for the barge?

A. I pay them a dollar per year.

Q. One dollar per year?

A. Yes.

Q. Are you able to state the tonnage you handled, approximately, during the year 1929?

A. Well, I could have; but I thought you were going to ask me bushels, so I changed it all to bushels.

Q. That is all right; give it to us in bushels.

A. I cannot say exactly; I had the girl figure up all the tonnage, and she got some tonnage that I had towed under

contract with somebody else in this amount, and she did not have time to take it out again; but I would say between twelve and thirteen million bushels.

[fol. 1488] By Mr. Brown:

Q. All for Chicago?
A. Yes.

By Mr. Belnap:

Q. That is all grain, is it?
A. Yes.

By Mr. Day:

Q. This that the girl included, that had been under contract with somebody else, what was that?
A. That was grain that went down the river.
Q. Went in the other direction?
A. Went in the other direction. I had a boat under charter to another company.
Q. One of your tow boats?
A. One of my tow boats; somebody elses job. I just had it under charter, and for a government report we have to show that tonnage, and she took that tonnage.
Q. Whom did you turn over your tow boat to?
A. Central barge line.
Q. Where do they operate?
A. They operate from New Orleans and Pittsburgh as far up as Minneapolis, and into Chicago. They have a very big operation.
Q. Then they should have been listed with the other barge lines operating the Illinois River.
A. They do not tow grain into Chicago. I was asked what companies towed grain into Chicago.
Q. You mean they stop short of Chicago?
[fol. 1489] A. They tow south, but they do not tow grain into Chicago.
Q. You mean they operate only in one direction?
A. For grain, yes.
Q. They would take grain out of Chicago and haul it down to New Orleans, for instance?
A. I imagine they would; I don't know.
Q. Or they would haul it to Peoria and St. Louis?
A. That is right.

Q. But they do not bring grain up to Chicago?

A. They do not have any operation on the south side, up the Sag Channel.

Q. Will you tell us what your revenue receipts were in 1939, from this grain?

A. I cannot tell you that, no.

Q. You do not know the amount of business you did last year?

A. I know the approximate amount of business, but it includes a lot of other things besides towing grain.

Q. What other things?

A. Just like I said, I had these boats chartered out; and I have towed steel a little, not very much. I have had a tow chartered out towing coal from Havanna to Chicago; and all that revenue is in my gross receipts, and I have not picked it out.

Q. You have classified that as rentals to other companies?

A. That is rentals; yes, sir.

Q. And you don't know what part of your receipts were [fol. 1490] from grain hauling?

A. No.

Q. Steel and coal, and so forth?

A. Yes, sir.

Q. What were your total receipts from all operations?

A. From all operations, in the neighborhood of $270,000.

Q. Well, isn't it fair to say that about 90 per cent of that revenue was derived from this grain traffic?

A. No, sir; no.

Q. What would be your best judgment on it?

A. Oh, I would say about, probably 75 per cent of it.

Q. What was your payroll in 1939?

A. The payroll amounts to a little over $5,000 a month. That would be $60,000 for the year.

Q. And do you pay Social Security taxes on that?

A. No, we do not. All boats documented are not compelled to pay that.

Q. They are not subject to the Social Securities Act?

A. They are not subject to the Social Security, no.

Q. The only federal tax you would pay, then, is income tax?

A. That is right.

Q. What did that amount to last year?

Mr. Belnap: Mr. Examiner, this gentleman is not my witness; I don't know whether he wants to tell his private business. I think he ought to be instructed that he has a right to [fol. 1491] say to the Examiner that he would prefer not to answer, and ask the Examiner whether or not he has to.

Mr. Day: I submit this is not private business.

Mr. Belnap: I am simply advising the witness as to his rights.

Mr. Day: What I am acquiring about is taxes from his so-called barge line.

Mr. Belnap: I just advised the witness that if he has anything about his personal business—I wouldn't want to tell Mr. Day my income tax, because he would laugh at me; maybe this gentleman does not. If he wants to tell him, O. K.; but if he does not want to, I tell him he can ask the Examiner and get a ruling.

Exam. Taylor: What is the question?

Mr. Day: I asked him what the federal income tax was that he paid in 1939.

Exam. Taylor: Paid on what?

Mr. Belnap: Personal business.

Mr. Day: No.

Exam. Taylor: I am asking you, Mr. Day.

Mr. Day: This gentleman is operating as an individual, and I am asking him what income tax he paid.

Mr. Belnap: What year?

Mr. Day: 1939. I asked him for the taxes that he paid in 1939. These gentlemen do not have to try to heckle me. [fol. 1492] Mr. Belnap: Please, Mr. Examiner, I am not trying to heckle him. He has the gentleman on the stand——

Mr. Day: That is not the question; the Examiner asked me what I was inquiring about, and Mr. Root broke in and said what year, after I had specified the taxes paid in 1939.

Mr. Root: You had not specified.

Mr. Day: I did.

Exam. Taylor: Do you care to answer that?

The Witness: Well, do you consider that it is, that it has a definite bearing on this case?

Exam. Taylor: Only insofar as the business as a carrier by the barge lines is concerned; as to your personal business, I would say no,—personal affairs. If you could sever it, give it as to the barge lines, why that would be a different question.

The Witness: Well, I just keep one set of books.

Exam. Taylor: That includes this business, as well as any other business, your personal affairs?

The Witness: That is right.

Exam. Taylor: I won't require you to furnish that, if you cannot make a distinction between them.

Mr. Day: You say you will not require it?

Exam. Taylor: No, under those circumstances, I will not.

Mr. Day: I would like to note an exception to the Examiner's ruling.

[fol. 1493] Exam. Taylor: Exception noted on the record.

By Mr. Day:

Q. What was the amount of state or county taxes paid by you last year?

A. Around, as I recall it, $209.

Q. Now, you are familiar with the routes traversed in operating your barges from Illinois River points to elevators in South Chicago?

A. Yes, sir.

Q. You know the location of those elevators, do you?

A. Yes, sir.

Q. And what channels are they located on?

A. On the Calumet River.

Q. The same branch of the Calumet River?

A. Yes, sir. You are talking about the elevators in South Chicago now?

Q. To which you deliver grain.

A. To which I deliver grain; that is right.

Q. Are all of those operations through the Sag Channel?

A. Yes, sir.

Q. Do you ever have grain for elevators on the Chicago River?

A. We have taken a few barge loads up to the Santa Fe at Damen Avenue.

Q. That would require a movement all the way through the Drainage Canal?

A. Yes, sir.

[fol. 1494] Q. And the Chicago River.

A. Yes, sir.

Q. But, as I understand it, the bulk of your business is handled through the Calumet Sag Channel?

A. Yes, sir.

Q. What is the time ordinarily consumed in transporting grain from Seneca or Morris to these elevators?

A. That is coming in with the grain you refer to?

Q. Yes.

A. Not a round trip?

Q. No.

A. Coming in with the grain?

Q. Coming in.

A. It depends a little on the size of the tow we have, whether we have two barges or whether we have six or seven; but the average time from Morris is 24 hours into Chicago.

By Exam. Taylor:

Q. 24 hours from point to point?

A. Yes, sir. And that will vary less or more, probably as high as three or four hours one way or the other, depending on the size of the tow.

Q. And how much time is ordinarily taken before you start the return trip from the elevator?

Exam. Taylor: I don't quite understand the question.

By Mr. Day:

Q. After arrival of the tow at the elevator in south Chicago, how much time is ordinarily lost there before the tow [fol. 1495] and barges start on their return trip?

A. Well, that depends on whether we wait for them to unload any barges, or not. If we just bring in loads and pick up empties, which we do a good deal of the time, why, we probably are not in Chicago more than, oh, two—it takes about, I would say, two or three hours if we got a barge for three or four different elevators; by the time we deliver those barges it takes about from two to three hours; and then it will probably take two hours to pick up our empties and get out. I would say five hours moving around the various elevators and making up our tow and getting ready to go back—I would say about five hours.

Q. Do you customarily wait for the barges' unloading?

A. I would say about two-thirds of the time, by the time we get our tows ready to go back we do not have to wait more than an hour or two to get a barge; in that case we wait. I would say about two-thirds of the time we wait for the barge. We do not wait for all of them.

Q. How long does it take for the return trip?

A. About 12 hours to Morris.

Q. The Calumet Sag Channel is only wide enough for one barge?

A. Well, we tow two wide, two of the 20-foot barges wide.

Q. You say, then, that it is wide enough for two?

A. For two small barges, yes; two 20-foot barges; we do tow them occasionally two wide. Anything wider than that, we string them out.

[fol. 1496] Q. How many of your barges are under 20 feet?

A. There are 14 of them 20 feet wide.

Q. And you say when they are as much as 20 feet wide, there is room enough for another tow to pass in the other direction?

A. Oh, there is room for another to pass on these 26-foot barges.

Q. Is that the way the operation is conducted?

A. Yes.

Q. You do pass?

A. Oh, we pass all the time.

Q. Other tows going down the river?

A. Yes, sir. There are times when a tow boat will have a big barge—there are some barges operate up there as wide as 42 feet. Now, they cannot pass. That does not happen very often.

By Exam. Taylor:

Q. You mean in the Sag Channel?

A. In the Sag Channel. Any of our barges will pass a 26-foot barge in the canal; I will say that.

By Mr. Day:

Q. How long since you have sent any tows to Chicago?

A. You mean right now?

Q. Yes.

A. We have got a tow into Chicago now.

Q. You ran it in last night?

A. Came up the river last night, and it is in Chicago now. [fol. 1497] We had a tow in here the latter part of last week.

Q. You had one last week, and you have one on the way up now?

A. Yes, sir.

Q. When did it leave?

A. It left last night, about 6:00 or 7:00 o'clock, I would say.

By Mr. Root:

Q. Where did it leave from?

A. Morris.

By Mr. Day:

Q. You estimate that will be in this evening?

A. No, I stopped it at Joliet, on account of the ice in the Sag. I figure we have got some warm weather coming, and don't want to run that ice. It could run it.

Q. What is the longest you have been held up on account of ice or weather conditions?

A. Well, this period right now; we are not held up on all of our operation. We are held up in our operation below Seneca right now, and have been for three weeks. That is the longest we have been in the last three years.

Q. Three weeks?

A. Yes, sir.

Q. You have some grain on the barges below Seneca waiting to get to Chicago?

A. Yes, sir.

Q. You have been holding it there for three weeks?

A. Yes, sir. It has not been loaded that long; but we [fol. 1498] have not been able to get down there.

Q. How long have the barges been loaded?

A. Oh, I would say a week or ten days.

Q. So long as this freezing weather lasts, they will continue to be held?

A. That is right.

Q. So long as this cold weather lasts, you will hold this barge at Joliet too?

A. *On*, unless I decide to run it in. I can run it in at any time, if I want to.

Q. You made a statement that where you haul for the Co-operative Grain Dealers or its subsidiary, the Allied Barge Line, and supply the barges, that you charge 1¾ cents, was it?

A. 2¾ cents a hundred pounds.

Q. From Morris or Seneca?

A. That is right.

Q. And you said there have been occasions where you did make that full charge against them?

A. Yes; as a matter of fact, I think we did it eight times last year; we used our barge.

Q. You used eight barges? Now, as I recall the testimony of Mr. Robbins, he said that where he had occasion to use your barges for his grain, that at the same time there were barges of his in your possession, that you used another setup?

A. We do that quite a little.

[fol. 1499] Q. Do you include that in these eight times?

A. No; other times than these eight times we have traded barges with him. Maybe he won't need a barge today, and I need it some place else; and I have got another barge coming up tomorrow that will be in time for him, and we just trade. But this eight times that I referred to, he paid me 2¾ cents per hundred pounds for the use of my barge.

Q. In these barge lines that you named, what grain shippers have any interests?

A. The W. W. Dewey—I don't know whether I ought to say this or not.

Q. Yes, I think you ought to.

A. I am going to ask the Examiner: can we go off the record?

Exam. Taylor: Yes. What was the question, first?

Mr. Day: He was about to tell us the interests that certain grain firms have in some of these barge lines.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: You can testify; state it on the record now.

By Mr. Day:

Q. Now, just tell us about the interests of these grain firms in any barge lines.

A. The only barge line that I know of, outside of what we went over, with this Illinois River Packet, is the W. W. [fol. 1500] Dewey Grain Company. They own the Spring Lake Packet Company, and the Spring Lake Packet Company owns a barge known as Barge No. 9, about a 300 ton capacity. And the other grain company that owns—well, the Allied Barge Company own barges.

By Exam. Taylor:

Q. What did you state about your connection with Dewey Company?

A. Oh, did you want some statement on that, about my connection.

By Mr. Day:

Q. Yes, tell us about it.

A. I used the little tow boat Junior for about four months towing this barge No. 9.

By Mr. Belnap:

Q. When?

A. In 1938.

Q. To where?

A. Now, wait just a minute——

Mr. Day: Mr. Belnap, supposing you ask those questions on direct.

Mr. Belnap: I don't mean to interfere with you, Mr. Day; but I thought the Examiner suggested he would like to have the whole transaction cleared up, I apologize to you.

Exam. Taylor: Proceed.

Mr. Belnap: He is trying to think about a date; I thought that was what you wanted too.

The Witness: I am not sure whether it was 1937 or 1938; we did not work there very long.

[fol. 1501] By Mr. Day:

Q. What about John R. Hay; has he any connection with the Grain Business?

A. Not to my knowledge, no.

Q. How long has he been operating on the river?

A. In this connection, what do you mean; that he has a contract, or he has hauled some grain or what?

Q. Now, I mean is he connected by stock ownership or employment or in any other way, with these grain firms?

A. Well, that is what—that is the way I answered your question. I just wanted to be sure I answered correctly. You mean that he would have some sort of a financial arrangement, or contract, with the grain company; just the fact that he has towed some grain, you do not mean?

Q. No.

A. All right; I answered your question.

Q. So far as your knowledge goes Hay is an independent operator and had no connection with any grain company in any way?

A. No, sir.

Q. How long has he been operating as a grain hauler on the river?

A. Oh, he has hauled grain for the last two years, I know; I don't know whether he has hauled in other years, or not. I know he has hauled some grain for the last two years.

Q. Whom does he haul for?

A. Well, he hauls for the Cargill Grain Company; he has [fol. 1502] hauled some for Dewey Grain Company, and he has hauled some for Continental Grain Company, that I know of now. He may have hauled more.

Q. But he hauled substantial quantities for those three?

A. Yes, sir.

Q. What about Lawrence Transportation Company?

A. Lawrence Transportation Company has the job that I had with W. W. Dewey Company, towing that barge No. 9.

Q. Waterway Transportation,—well, that is a St. Louis outfit?

A. Yes, that is a St. Louis outfit.

Q. Do you have any interest or connection in any grain business?

A. No, sir. You mean in some way of a share of stock, or financial connection?

Q. Yes, financial connection.

A. No, sir; I do not have any connection with any grain company.

Q. Do you ever engage in the grain business at all yourself?

A. No, sir.

Q. Ever buy or sell grain?

A. I never do; no, sir.

Q. Your own interest in grain or any grain company, then, is in hauling it on the river?

A. Yes, sir; that is right.

Q. You spoke about the charges you make for the trans- [fol. 1503] portation of grain; is that charge the same, regardless of quantity offered?

A. As a rule, yes. I do not make any different charge for quantity offered.

Q. You say that because these people usually offer you grain in sufficient quantity where——

A. That is right. The only time that I made any exception, as I told you yesterday, was that case at Peru, where I charged them a little bit more because they did not have good loading facilities, and tied up my barge.

Q. Supposing a man should offer you a thousand bushels of grain at Morris, what would you tell him,—what would you charge him?

A. Well, our grain has to at least be offered in quantities big enough to load a barge.

Q. It has to be in barge lots?

A. Yes, just the same as you with a car could not take 50 bushels.

Q. We do take less than carload, but charge by the hundred pounds.

A. Well, I do not pretend to take anything in less than barge load lots.

Mr. Day: That is all.

Exam. Taylor: Off the record:

(Discussion outside of the record.)

[fol. 1504] By Mr. Enoch:

Q. Referring to exhibit 49, Mr. Mechling, is that the only form of bill of lading that is issued by the A. L. Mechling Barge Line?

A. Yes, sir; it is.

Mr. Enoch: I would like to ask another question that is not connected with this; one I overlooked:

Exam. Taylor: Go ahead.

By Mr. Enoch:

Q. Mr. Mechling, this case began last Wednesday; this is the third day. Were you here at the beginning of the hearing on Wednesday?

A. No, I was not.

Q. Were you here Wednesday?

A. I was here Wednesday afternoon; I think I got here around 2:00 o'clock.

Q. From whom did you receive notice that you should attend this hearing?

A. Well, I have known about it; I was here when you were having the hearings the 19th of December, and I have known about it, and I knew when the dates would be.

Q. At whose request did you arrange to attend the hearing?

A. By Mr. Belnap's.

Q. There is not the slightest impropriety in your talking this case over with Mr. Belnap many, many times; but you did talk it over?

A. Yes, sir.

Mr. Belnap: Otherwise I could not ask him questions.

[fol. 1505] Mr. Enoch: The reason is, you surprised me yesterday when you said you were calling Mr. Mechling at my request; but our conversation about it was certainly not prior to last Wednesday noon.

Mr. Belnap: I had understood from the past hearing, Mr. Examiner, that Mr. Enoch was especially anxious to have somebody operating on the river be on the stand and present the facts of that. When I said was Mr. Mechling called, if I used the word request, I do not think any such request has ever been made. I thought he wanted the facts, and I am glad to get it on the record.

Exam. Taylor: I am going to declare a five-minute recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. Have you finished?

Mr. Cole: I had one question, if I may.

Exam. Taylor: Mr. Cole.

By Mr. Cole:

Q. Mr. Mechling, I was just wanting to get straightened out on the number of barges that are operating on the Illinois Waterway, hauling grain to Chicago; I understand that you operate 17 of your own; there is one under lease; and that Allied have three barges.

A. Four.

Q. And the Dewey Company has one.

[fol. 1506] A. That is right.

Q. Now, how many barges does Hay have that he uses for hauling grain?

A. Oh, I don't know exactly. I see his operation. I would say around three or four. However, those are big barges. They haul about 45,000 bushels.

Q. Now, outside of this Hay and Allied and Dewey, do you know of any other barges that are being operated on the Illinois Waterway, hauling grain into Chicago?

A. Not unless the Federal Barge Line hauls some into Chicago; I don't know just what they do, whether they haul any into Chicago or not.

Q. This Dewey outfit that you referred to, when you handled from them; by their distance that they make, do they ship only from Havana?

A. No, Dewey ships from Pekin.

Q. Only from Pekin?

A. Pekin and the Hennepin Canal stations.

Q. How many stations are there on the Hennepin Canal?

A. I think there are three stations on the Hennepin Canal.

Q. Those are the location from which Dewey ships?

A. Yes, sir.

By Mr. Day:

Q. Are these barges of yours numbered?

A. Yes.

Q. How are they numbered?

[fol. 1507] A. The only way I can tell you that is what the numbers are; do you want that?

Q. Yes.

A. They are not numbered from 1.

Q. All right; tell us what the numbers are?

A. They are 4, 5, 6, 7, 1096, 1108, 1109, 1111, 1112, 1113, 1599, 101, 102, 103, 104, 105, and 106.

Q. When did you have this form of bill of lading, marked exhibit 49, printed?

A. Oh, that has been in use, I would say sometime during 1939; I do not recall just when I started to use that bill of lading, but it was during the year 1939.

Q. Who printed the forms?

A. I had the forms printed down at Joliet.

Q. By whom?

A. Isn't his name on there? I think his name is Newman Printing Company.

Mr. Day: That is all I have.

By Mr. Brown:

Q. Mr. Mechling,——
A. Yes, sir.

Q. When you said that Morris, Illinois, was the largest shipping point of grain by barge to Chicago, did you include Patonville and Seneca in the Morris group?

A. No; I used Patonville, but not Seneca; that was my thought in combining those two stations, Allied and——

[fol. 1508] Q. But Seneca would be separate?

A. Seneca would be separate.

Q. Would Seneca rank second?

A. I don't know; I just do not feel qualified to make that distinction, without going over that from my records; I have not done that from each station.

Q. Based on your memory, would you say Seneca is about along with Ottawa and LaSalle?

A. I would say Seneca, Ottawa, and LaSalle are about the same.

Q. Running second to Morris?

A. Yes.

Q. I want to question you about your rates, which you stated yesterday were public; that is, where you used your own barges, and refer particularly to the rate of 2¾ cents per hundred pounds from Morris, Seneca, and Ottawa and LaSalle; now, does that 2¾ cent rate apply for deliveries to elevators on the Chicago River, as well as to elevators on the Calumet River?

A. Well, we have never had any occasion to deliver any of that grain up there, except once or twice.

By Mr. Root:

Q. Up there, you mean the Chicago River?

A. The Santa Fe elevator. As I recall, those same rates did apply there. However, I have in my contract with Allied Grain Company, in that contract I have an extra charge if we just go up there one trip, so that we have got to go [fol. 1509] back light; I have an extra charge by the hour, whatever we use. But if we establish a trade there, going back and forth, the rate will be the same.

Q. At the present time, charging on the hour basis, will that hour basis run from Hammond, which is the junction with the river, up to the elevator, and back again?

A. It will just consume the time one way.

Q. Which is it, the going trip?

A. For instance, going up it would be going back and going after the barge; it would be from the time we left the Sag Junction at Hammond to go up after the barge; it would be a dead running.

Q. It would be dead running to pick up the empty barge?

A. That is right.

Q. Let us take the contract rate of one cent per bushel; would that cover delivery also to the Santa Fe elevator?

A. Under those same terms, the same arrangement; yes, sir.

Q. That would just involve what you have just explained, dead time paid for on an hourly basis?

A. Unless we establish that trade; then, when we got empties to go after, there won't be that.

Q. In other words, if the shippers along the river give you sufficient business to go to the Santa Fe elevator regularly, these rates will apply?

A. Yes, sir.

[fol. 1510] Mr. Brown: That is all.

Exam. Taylor: Any redirect?

Mr. Belnap: Yes, I have some questions.

Redirect examination.

By Mr. Belnap:

Q. Has your personal note to the Norris Grain Company, about which you testified been paid?

A. No, it has not; it is not due yet.

Q. When you spoke about your tonnages out of Morris, were you including in the aggregate the grain that you handled for the Allied Barge Corporation?

A. Yes, sir.

Q. Is that Barge No. 9 about which you spoke used in the transportation of grain into Chicago?

A. Yes, sir.

Q. As well as into Pekin?

A. Yes, sir. It made quite a few trips this year.

Q. You charged simply a towing rate when you handled it with your tow boat, the Junior; or did you charge your going rate in cents per hundred pounds?

A. I charged the going rate at that time in cents per hundred pounds.

Q. The one that you named as applicable from Joliet and Pekin?

A. Yes, sir; we had a rate, my charge to the Spring Lake Packet Company.

Q. That was the grain of Dewey, however?

[fol. 1511] A. That is right.

Q. Have you also handled the Dewey Grain in your own barges?

A. I have, once or twice.

Q. Do you actively solicit this grain business from the various shippers along the river, Mr. Mechling?

A. Yes, sir.

Q. Solicit all of them?

A. Yes, sir.

Q. On your exhibit 49, do you know when you handled this shipment for the Ladd Elevator Company as shipper, to Cargill?

A. As I recall, along in October sometime. I see the date is not on the bill of lading; it should be there. I don't know why it is not.

Q. 1939?

A. Yes, sir.

Q. The Examiner called our attention to the provision on exhibit 49 in connection with that clause headed 'Non-negotiable,' which in substance recites that you do not hold yourself out as transporting for the general public, and will do so only under private contract. Do you observe that announcement, or do you actually haul even when you do not have a private contract?

Mr. Cole: I object; trying to change a written document.

Mr. Belnap: That portion of that exhibit 49 is not a contract between the Ladd Elevator Company and A. L. [fol. 1512] Mechling Barge Line. It is an announcement by A. L. Mechling Barge Line. Now, I am trying to find out, as a matter of fact, whether he observed that announcement or whether he transports without contracts?

Mr. Brown: In other words, whether he waives it.

Mr. Enoch: I think the witness ought to be advised what the law of the state of Illinois is at the time he goes into that question; and I submit, at the time this legal advice was given about which the witness here spoke earlier in his testimony, that this very phrase had something to do with it.

Mr. Belnap: Now, I have not the slightest objection in the world, if Mr. Enoch wants to give the witness legal advise; but I do not see how the legal advice Mr. Enoch could give him could possibly change his testimony as to the fact.

Mr. Day: Well, you gave him legal advice awhile ago, Mr. Belnap; and you are not his lawyer.

Mr. Belnap: I advised him as to his rights.

Mr. Day: That is what Mr. Enoch did;—you are trying to get him to testify differently.

Mr. Belnap: I resent that, sir; I am trying to get him to testify as to the true facts.

Mr. Day: I resent your remarks too.

Mr. Belnap: We have resented all around; I wonder if we couldn't have the witness tell the facts.

Mr. Cole: Now, we have got to the point where I have an [fol. 1513] objection, based on the very general statement that Mr. Mechling made; and I am sure he will recall it, that all of his hauling has been done, all of it either under this contract or under that contract with the Allied outfit that we have here. Now, if all of his handling that he testified to has been done under these written contracts they have here, my objection is we cannot vary that written contract.

Mr. Belnap: I am not trying to, sir.

Exam. Taylor: This is redirect; proceed.

Mr. Belnap: Can you answer my question?

Exam. Taylor: Read it.

(Question read.)

By Mr. Belnap:

Q. Other than the type of bill of lading shown in your exhibit 49.

Exam. Taylor: He may answer.

Mr. Enoch: I want to note an objection.

Exam. Taylor: The objection will be noted on the record—this is as a fact now?

The Witness: That is right; I do not observe that, and my testimony earlier to the effect that I have and am willing to haul grain for any elevator on the river, I think will bear that out, that I do not insist on a definite contract with a grain company before I will haul grain for them.

By Mr. Belnap:

Q. Do you undertake to place barges at the elevators for [fol. 1514] grain loading before any bill of lading is signed?

A. Again, please?

Q. Do you undertake to place barges at river elevators before any bill of lading is signed?

A. Oh, yes; we place the barges there as soon as they notify me that they have a bargeload of grain. They do not make out a bill of lading until the barge is loaded.

Q. Do you keep in contact with various elevators up and down the river to determine whether they have grain to ship, and to determine when it is possible for you to place a barge?

A. Yes, sir.

Mr. Belnap: Mr. Examiner, I have here Mr. Mechling's contract with the Allied Barge Corporation. There are two of them. One was entered into at the time the first three barges were sold by him to Allied Barge Corporation, which covers a specified period; and then the almost identical contract was entered into when the fourth barge was sold to the Allied Barge Corporation; these are Mr. Mechling's signed copies of the contracts, which he of course must have back for his own records.

Exam. Taylor: Did you exhibit them to the railroad counsel?

Mr. Belnap: I have.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

[fol. 1515] Exam. Taylor: Back on the record. I am going to insist that the river straight bill of lading, the heading thereof be copied or read in the record; and following that, the two contracts which are submitted be read in the record.

Mr. Belnap: And by the heading, you mean that portion of the bill of lading down to where it says to whom it is consigned?

Exam Taylor: Yes.

Mr. Belnap: Will you read them into the record, Mr. Mechling?

The Witness: The heading of the bill of lading is as follows: River straight bill of lading. A. L. Mechling Barge Lines. Special Contract Towing Only. Received of the shipper in apparent good order and condition, except as

noted, the following goods, shipper's load, weight and count (amount, quality and value unknown to the carrier) to be delivered in like good order and condition subject to the terms and conditions hereof as consigned herein or to his or their assigns upon paying the freight charges indicated below. Not Negotiable. The shipper takes notice of, and, for himself and his assigns, assents to all of the provisions, terms and conditions hereof whether printed or written, including those on the back hereof, each of which is material, to the rates indicated below, and part of the contract. It is understood and agreed that the carrier and the vessel or vessels do not hold themselves out as trans- [fol. 1516] porting cargo or towing for the general public and only transport cargo and tow as private carrier under private contract.

The two contracts are as follows:

[fol. 1517] This writing, made and entered into in duplicate this first day of June, A. D. 1939, by and between A. L. Mechling, doing business as A. L. Mechling Barge Lines, first party, and Allied Barge Corporation, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and having a place of business at Morris, Illinois, second party, Witnesseth: That the said parties for the considerations herein mentioned have agreed and do hereby agree as follows, that is to say:

Recitals: The parties, under date of December 10, 1938, entered into an assignment to second party of the rights of first party in three certain barges, and on the same date entered into a towage agreement, reference to which assignment and towage agreement is hereby made for all the recitals, terms, covenants and provisions of each.

The three barges whereto the rights of first party were assigned to second party by said assignment dated December 10, 1938, were identified in said assignment as bearing operating numbers 216, 745 and 749.

Second party desires to acquire the rights of first party in a fourth barge, identified as bearing operating number 744, for use in second party's business of transporting grain and beans in bulk in the waters of the Illinois River and Waterway and Mississippi River between St. Louis, Missouri, and South Chicago, Illinois, and intermediate points. [fol. 1518] The parties desire to extend the term of the said towing agreement of December 10, 1938, to, and including, December 10, 1941, (without however extending the

time for any payment to be made by second party on account of said three barges 216, 745 and 749) provided, that the agreement hereby witnessed is not intended to waive or excuse performance, or any delay in performance, of any act or forbearance to which second party would be bound if the agreement hereby witnessed had not been made.

By contemporaneous instrument, first party, as part of this transaction, has transferred his rights in said barge 744 to second party, and by said contemporaneous instrument, as part of this transaction, second party has assumed obligations as therein expressed.

Consideration: The consideration hereof is the said transfer of the rights of first party in said barge 744, the obligations of second party assumed in said instrument transferring to second party the rights of first party in said barge 744, and the mutual covenants of the parties herein expressed.

Term: This agre-ment shall remain in force until December 10, 1941, inclusive of that day.

Covenants: 1. First party agrees that during the life of this agreement he will own, charter or control a towboat or towboats capable of moving said four barges from Morris to Chicago and return at times when the same are ready and [fol. 1519] movement thereof may be reasonably requested by second party. It is understood that first party has and will have different customers from time to time, including second party, and that such towboat or towboats need not be held or used exclusively or preferentially for second party's towing, but during the life of this agreement such towbo..t or towboats shall be used for second party's towing, under such bill of lading form as first party may from time to time customarily use in his business, as part of first party's general towing business, along with first party's other customers, without any discrimination against second party with respect to times of making towboat available or otherwise; provided, that first party's undertakings in this paragraph numbered one shall not be conditions in any respect of any obligation of second party assumed in said contemporaneous agreement or otherwise.

2. Second party agrees: (a) That it will pay first party for all grain, except oats, and beans, moved between Morris, Illinois, and South Chicago, Illinois, by means of first

party's towboats, the sum of one cent per bushel outturn weights; and eight-tenths of a cent per bushel outturn weights for all oats moved by means of first party's towboats between Morris, Illinois, and South Chicago, Illinois.

(b) This agreement primarily contemplates the movement of loaded barges from Morris to South Chicago and return of empty barges to Morris. If, however, second [fol. 1520] party requests first party to deliver barges at the Santa Fe house on the South Branch of the Chicago River while on the way into South Chicago with a tow, second party shall pay first party therefor at the rate of eight dollars an hour for the time between the Sag Junction and the Santa Fe house and return without tow and in addition the aforesaid price per bushel in event of any such barges being laden. In event the towboats of first party are out of service or the second party is compelled for some special reason to move said barges more quickly than first party would be able to move them in the line of his usual service to his customers, then in either of those events, second party, if not in default hereunder, may give first party written notice addressed to him and at 110 Willow Avenue, Joliet, Illinois, specifying the number, lading, destination and location, which shall be a single location, of such barges as to which such reason exists and the reason: and in event the barges mentioned in said notice are seaworthy and the insurance provisions hereof are fulfilled with respect to them and their cargo, then if first party fails within 48 hours next after the receipt of such notice to bring his towboat to said location and hook on to such tow, providing second party has first complied with all of the provisions hereof, then under those circumstances second party may make other arrangements for moving said barges on the trip mentioned in such notice without liability to first party: [fol. 1521] provided that only one such notice shall be given in any one period of 96 consecutive hours.

(c) That all barges shall be seaworthy at the time when first party is notified that the same are ready and at the time when first party is asked to hook on and when they break ground and that no inspection or acceptance by first party shall be deemed a waiver hereof.

(d) That it will be responsible for all lading, unlading and the moorings for barges and will save first party harmless with respect thereto; and that the obligation of first

party as to any tow shall end when tow arrives at destination up to moorings and made fast, and freight on each barge load shall be due and payable as soon as outturn weights are known and the empty barge is returned to Morris or other point of departure.

(e) That as to each tow, it will furnish first party with definite shipping instructions and enter into the first party's bill of lading as customarily used by first party in its general towage business from time to time and that it will have available mooring facilities at terminal points for all tows on arrival.

(f) That it will maintain full insurance coverage with a responsible underwriter or underwriters on all barges and cargoes with provisions in policies effectively preventing subrogation against first party, and exhibit said policies to [fol. 1522] first party at any reasonable times.

(g) That it will use no other towage facilities than those of first party for any of its business between St. Louis and any terminal or point at or near the northerly end of the Illinois Waterway or for intermediate points, except as hereinabove expressly provided in paragraph numbered 2(b): and in event of towage between points within the herein provided water limits for use of said barges other than Morris, Illinois, and South Chicago, Illinois, and points intermediate between Morris and South Chicago, the rates shall be first party's regular rate at the time when such towage occurs; provided: that in the event that the said four barges in full use and active movement are unable to handle the volume of tonnage in good faith offered to the second party, the second party may lease, purchase or charter additional barges, other than the four barges aforesaid, for such excess tonnage; provided, that first party shall have the option of furnishing any such additional barges, and second party shall secure them from first party if he desires to furnish them; and, as to such additional barges, first party shall have the right to have the towage thereof, whether furnished by him or another, on the same terms as herein provided for the four barges hereinabove first mentioned unless second party is unable to procure such additional barges without agreeing to let some other party furnish towage for such additional barges.

[fol. 1523] (h) That the said four barges shall be used only in the waters of the Illinois River and Waterway, and the Mississippi River between St. Louis and the mouth of the Illinois River.

(i) That in event second party has other towage business on the Illinois Waterway, first party shall have the option of exclusively doing also such other business than between the points above mentioned, at first party's customary rates and terms as they may exist at the time when such other business is to be done, subject to the provisions of paragraph numbered 2 (b) hereof.

3. Second party contemporaneously with said towage agreement of December 10, 1938, delivered 23 notes as evidence of part of the consideration moving to first party for his assignment to second party of his rights in said three barges identified as bearing operating numbers 216, 745 and 749. Second party has contemporaneously herewith delivered 24 notes payable to first party as evidence of part of the consideration moving to first party for his assignment to second party of his rights in the said fourth barge identified as bearing operating number 744. In event of default of second party in the payment of any of said notes according to the tenor and effect thereof or in the performance of any of its obligations, first party may but need not repossess any or all of the said barges either at the same time or at different times and one or several exercises of [fol. 1524] this power of repossession shall not exhaust it; and for the purpose of such repossession, first party, his agents, servants and attorneys, may, using such force as is necessary, enter upon said barges or any or either of them or any pier, wharf or premises at any time. Such repossession shall terminate all rights of second party in any barge or barges repossessed. The prompt payment of said notes and the prompt performance of the obligations of second party shall be of the essence hereof.

Provided, however, that when the 23 notes executed by second party contemporaneously with the execution of said towing agreement and assignment of December 10, 1938, have been fully paid, second party may obtain a bill of sale from the Dravo Corporation as to Barges Nos. 216, 745 and 749 as provided in the bailment lease assigned to second party by said assignment and thereafter this agreement shall not be effective as to said Barges Nos. 216, 745

and 749, except as to the towage provisions herein contained.

In event of any default of the second party in the payment of any of said notes, all of the said notes shall at once become due at the option of first party. Provided: that in event of the repossession of any barge or barges by first party, second party shall receive a credit for each barge repossessed upon unmatured notes only, last falling due, in an amount that bears the same proportion to the deferred balance of the price of such barge or barges so repossessed and evidenced by notes, as the unexpired por- [fol. 1525] tion of the term of this agreement bears to the whole term thereof; and further provided: that such credit shall be reduced by the reasonable costs and expenses of effecting such repossession; and further provided: that this provision shall under no circumstances create an obligation on first party to make any payment to second party, but, at most, give rise to a credit as aforesaid if said notes remain unmatured and unpaid in an amount equal to or greater than the credit above provided for.

4. Second party shall make its payments of the notes mentioned in the next preceding paragraph numbered 3 hereof at the Farmers State Bank, Sheffield, Illinois. Said bank shall treat each such payment as a trust fund to pay therefrom, in so far as the same may be needed or will extend, to Dravo Corporation in Pittsburgh, Pennsylvania, amounts, if any, which in the month in which payment at said bank of said notes should be made, fail due to said Dravo Corporation from first party on account of the barges herein mentioned, rendering the overplus, if any, to first party. At the day of maturity of any of said notes of second party, first party shall cause such note to be at said bank, so that the same may be returned to second party if then paid. The obligation of second party to pay said notes may be proportionately abated only by credit arising as to unmatured notes upon repossession of a barge or barges by first party as hereinbefore provided; and subject to such abatement the obligation of second party upon [fol. 1526] said notes shall be a trust, primarily to discharge the amounts of installment payments from first party to be made to said Dravo Corporation under the bailment leases of October 18, 1938, and October 25, 1938, mentioned in said contemporaneous instrument and in said

assignment of December 10, 1938, in so far as the said notes of second party extend and may be needed therefor; and each payment of said notes shall be treated as a trust as hereinabove provided: provided, that first party may at his sole choice otherwise wholly or partly satisfy any or all of the said installment payments from him to Dravo Corporation, thereby, to the extent of such other satisfaction, relieving his right to said notes of second party and their proceeds from any trust whatever, and entitling himself thereto.

5. Second party agrees to perform all the terms of the bailment leases of October 18, 1938, and October 25, 1938, mentioned in said contemporaneous agreement, and in said assignment of December 10, 1938.

6. It is hereby agreed by and between the parties hereto that when second party has fully paid all of the 23 notes executed by it contemporaneously with said towage agreement and assignment of December 10, 1938, and if, at said time, said second party has also paid all of the 24 notes executed by it simultaneously herewith which have then become due and if, at said time, second party has fully com- [fol. 1527] plied with all of the other covenants and provisions hereof and the covenants and provisions of said towage agreement and assignment of December 10, 1938, and when said Dravo Corporation has been fully paid all of the moneys due to it under said bailment leases of October 18, and October 25, 1938, the second party shall exercise its option to purchase from the Dravo Corporation said Barge No. 744 for the sum of $10 as provided in the bailment lease of October 25, 1938, and hereto assigned to second party contemporaneously herewith. Immediately after acquiring title to said Barge No. 744, second party shall execute to first party a first preferred ship mortgage conforming to the statutes of the United States of America in such case made and provided upon said Barge No. 744 for the purpose of securing such of said 24 promissory notes executed simultaneously herewith as may then remain unpaid.

7. Until all of said 23 notes executed by second party contemporaneously with said towage agreement and assignment of December 10, 1938, are paid by second party according to the tenor and effect thereof, second party shall

have no other right in said Barges Nos. 216, 745 and 749 save the right of possession, which shall be terminated by any attempt by second party to alienate or encumber the same or any seizure thereof by or under color of legal authority or by the adjudication in bankruptcy of said second party or by the filing of a petition for debtor reorganization by the second party or by insolvency of second party; [fol. 1528] and until second party has acquired title to said Barge No. 744 by exercising its option to purchase the same from the Dravo Corporation, as hereinabove provided, second party shall have no other rights in said Barge No. 744 save the right of possession, which shall be terminated by any attempt of second party to alienate or encumber the same or any seizure thereof by or under color of legal authority or by the adjudication in bankruptcy of said second party or by the filing of a petition for debt or reorganization by second party or by insolvency of second party. After second party has acquired title to said Barge No. 744 and executed a first preferred ship mortgage as hereinabove provided, said first party shall have no rights whatsoever in and to said Barge No. 744 except such rights as it shall acquire by reason of the terms and provisions of said first preferred ship mortgage, and thereafter this agreement shall not be effective as to said Barge No. 744 except as to the towage provisions herein contained.

Witness the hand and seal of the first party and the hand and seal of the second party and its signature by its lawfully authorized officer this first day of June, 1939. A. L. Mechling, doing business as A. L. Mechling Barge Lines, first party, By A. L. Mechling (Seal).

Allied Barge Corporation, By O. B. Robbins, its President. (Corporate Seal attached) W. H. Allen, Secretary.

[fol. 1529] State of Illinois,
County of Grundy, ss:

I, G. C. Ragan, a Notary Public in and for said County, in the State aforesaid, do hereby certify that A. L. Mechling, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of June, A. D. 1939.

G. C. Ragan, Notary Public.

State of Illinois,
County of Grundy, ss:

I, G. C. Ragan, a Notary Public in and for said County, in the State aforesaid, do hereby certify that O. B. Robbins and W. H. Allen, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as the President and Secretary, respectively of Allied Barge Corporation, a corporation, and known to me to be such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed, sealed with the corporate seal of said corporation and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth. [fol. 1530] Given under my hand and notarial seal this 13th day of June, A. D. 1939.

G. C. Ragan, Notary Public.

This writing, made and entered into in duplicate this 10th day of December, A. D. 1938, by and between A. L. Mechling, doing business as A. L. Mechling Barge Lines, first party, and Allied Barge Corporation, a corporation organized and existing under and by virtue of the laws of the State of Illinois, second party, Witnesseth: That the said parties have for the considerations herein mentioned agreed and do hereby agree as follows, that is to say:

Recitals: First party owns and operates towboats on the Illinois River and Waterway, and owns rights in three certain barges, and desires to furnish the towage required by second party for barges at any time to be owned or controlled by second party on the Illinois River and Waterway.

Second party now owns or controls no barges and desires to engage in the business of furnishing barges at Morris, Illinois, for transportation of grain and beans in bulk in the waters of the Illinois River and Waterway and Mississippi River between St. Louis, Missouri, and South Chicago, Illinois, and intermediate points, and desires to acquire the rights of first party in the said three barges.

By contemporaneous instrument first party, as part of [fol. 1531] this transaction, has transferred his rights in

said three barges to second party, and by said contemporaneous instrument, as part of this transaction, second party has assumed obligations as therein expressed.

Consideration: The consideration hereof is the said transfer of the rights of first party in said barges, the obligations of second party assumed in said contemporaneous instrument, and the mutual covenants of the parties herein expressed.

Term: This agreement shall remain in force until November 10, 1940.

Covenants: 1. First party agrees that during the life of this agreement he will own, charter or control a towboat or towboats capable of moving said three barges from Morris to Chicago and return at times when the same are ready and movement thereof may be reasonably requested by second party. It is understood that first party has and will have different customers from time to time, including second party, and that such towboat or towboats need not be held or used exclusively or preferentially for second party's towing, but during the life of this agreement such boats shall be used for second party's towing, under such bill of lading form as first party may from time to time customarily use in his business, as part of first party's general towing business, along with first party's other customers without any discrimination against second party with respect to [fol. 1532] times of making towboat available or otherwise; provided, that first party's undertakings in this paragraph numbered one shall not be conditions in any respect of any obligation of second party assumed in said contemporaneous agreement or otherwise.

Q. Second party agrees: (a) That it will pay first party for all grain, except oats, and beans, moved between Morris, Illinois, and South Chicago, Illinois, by means of first party's towboats, the sum of one cent per bushel outturn weights; and eight-tenths of a cent per bushel outturn weights for all oats moved by means of first party's towboats between Morris, Illinois, and South Chicago, Illinois.

(b) This agreement primarily contemplates the movement of loaded barges from Morris to South Chicago and return of empty barges to Morris. If, however, second party requests first party to deliver barges at the Santa Fe house on the South Branch of the Chicago River while on the way into South Chicago with a tow, second party shall

pay first party therefor at the rate of eight dollars an hour for the time between the Sag Junction and the Santa Fe house and return without tow and in addition the aforesaid price per bushel in event of any such barges being laden. In event the towboats of first party are out of service or the second party is compelled for some special reason to move said barges more quickly than first party would be able to move them in the line of his usual service to his customers, then in either of those events, second party, if not in default [fol. 1533] hereunder, may give first party written notice addressed to him and at 110 Willow Avenue, Joliet, Illinois, specifying the number, lading, destination and location, which shall be a single location, of such barges as to which such reason exists and for the reason; and in event the barges mentioned in said notice are seaworthy and the insurance provisions hereof are fulfilled with respect to them and their cargo, then if first party fails within 48 hours next after the receipt of such notice to bring his towboat to said location and hook on to such tow (providing second party has first complied with all of the provisions hereof), then under those circumstances second party may make other arrangements for moving said barges on the trip mentioned in such notice without liability to first party: provided that only one such notice shall be given in any one period of 96 consecutive hours.

(c) That all barges shall be seaworthy at the time when first party is notified that the same are ready and at the time when first party is asked to hook on and when they break ground and that no inspection or acceptance by first party shall be deemed a waiver hereof.

(d) That it will be responsible for all lading, unlading and the moorings for barges and will save first party harmless with respect thereto; and that the obligation of first party as to any tow shall end when tow arrives at destination up to moorings and made fast, and freight on each barge load shall be due and payable as soon as outturn [fol. 1534] weights are known and the empty barge is returned to Morris or other point of departure;

(e) That as to each tow, it will furnish first party with definite shipping instructions and enter into the first party's bill of lading as customarily used by first party in its general towage business from time to time and that it will have

available mooring facilities at terminal points for all tows on arrival;

(f) That it will maintain full insurance coverage with a responsible underwriter or underwriters on all barges and cargoes with provisions in policies effectively preventing subrogation against first party, and exhibit said policies to first party at any reasonable times;

(g) That it will use no other towage facilities than those of first party for any of its business between St. Louis and any terminal or point at or near the northerly end of the Illinois Waterway or for intermediate points; except as hereinabove expressly provided in paragraph number 2 (b); and in event of towage between points within the herein provided water limits for use of said barges other than Morris, Illinois, and South Chicago, Illinois, and points intermediate between Morris and South Chicago, the rates shall be first party's regular rate at the time when such towage occurs; provided: that in the event that the said three barges in full use and active movement are unable to handle the volume of tonnage in good faith offered [fol. 1535] to the second party, the second party may lease, purchase or charter additional barges, other than the three barges aforesaid, for such excess tonnage; provided, that first party shall have the option of furnishing any such additional barges, and second party shall secure them from first party if he desires to furnish them; and, as to such additional barges, first party shall have the right to have the towage thereof, whether furnished by him or another, on the same terms as herein provided for the three barges hereinabove first mentioned unless second party is unable to procure such additional barges without agreeing to let some other party furnish towage for such additional barges.

(h) That said three barges shall be used only in the waters of the Illinois River and Waterway, and the Mississippi River between St. Louis and the mouth of the Illinois River.

(i) That in event second party has other towage business on the Illinois Waterway, first party shall have the option of exclusively doing also such other business than between the points above mentioned, at first party's customary rates and terms as they may exist at the time when

such other business is to be done, subject to the provisions of paragraph numbered 2(b) hereof.

3. Second party has contemporaneously herewith delivered 23 notes as evidence of part of the consideration moving to first party for his assignment to second party [fol. 1536] of his rights in said three barges. In event of default of second party in the payment of said notes according to the tenor and effect thereof, or in the performance of any of its obligations, first party may, but need not, repossess any or all of the said barges either at the same time or different times and one or several exercises of this power of repossession shall not exhaust it; and for the purpose of such repossession first party, his agents, servants and attorneys, may, using such force as is necessary, enter upon said barges or any or either of them, or any pier, wharf or premises at any time. Such repossession shall terminate all rights of second party in any barge or barges repossessed. The prompt payment of said notes and the prompt performance of the obligations of second party shall be of the essence hereof.

In event of any default of the second party in the payment of any of said notes all of the said notes shall at once become due at the option of first party. Provided; that in event of the repossession of any barge or barges by first party, second party shall receive a credit for each barge repossess upon unmatured notes only, last falling due, in an amount that bears the same proportion to $6,432.81 as the unexpired portion of the term of this agreement bears to the whole term thereof; and further: provided, that such credit shall be reduced by the reasonable costs and expenses of effecting such repossession, and further: provided, that [fol. 1537] this provision shall under no circumstances create an obligation on first party to make any payment to second party, but, at most, give rise to a credit as aforesaid, if said notes remain unmatured and unpaid in an amount equal to or greater than the credit above provided for.

4. Second party shall make its payments of the notes mentioned in the next preceding paragraph numbered 3 hereof at the Farmers State Bank, Sheffield, Illinois. Said bank shall treat each such payment as a trust fund to pay therefrom, in so far as the same may be needed or will extend, to Dravo Corporation, in Pittsburgh, Pennsylvania,

amounts, if any, which in the month in which payment at said bank of said notes should be made, fall due to said Dravo Corporation from first party on account of the barges herein mentioned, rendering the overplus, if any, to first party. At the day of maturity of any of said notes of second party, first party shall cause such note to be at said bank, so that the same may be returned to second party if then paid. The obligation of second party to pay said notes may be proportionately abated only by credit arising as to unmatured notes upon repossession of a barge or barges by first party as hereinbefore provided; and subject to such abatement the obligation of second party upon said notes shall be a trust, primarily to discharge the amounts of installment payments from first party to be made to said Dravo Corporation under the bailment leases of October 18, 1938, and October 25, 1938, mentioned in [fol. 1538] said contemporaneous instrument, in so far as the said notes of second party extend and may be needed therefor; and each payment of said notes shall be treated as a trust as hereinabove provided; provided, that first party may at his sole choice otherwise wholly or partly satisfy any or all of the said installment payments from him to Dravo Corporation thereby, to the extent of such other satisfaction, relieving his right to said notes of second party and their proceeds from any trust whatever, and entitling himself thereto.

5. Second party agrees to perform all the terms of the bailment leases of October 18, 1938, and October 25, 1938, mentioned in said contemporaneous agreement. In event first party defaults in his installment payments to Dravo Corporation under said bailment lease of October 25, 1938, second party, after first giving first party notice in writing, which notice shall be fifteen days notice or until Dravo Corporation takes steps to repossess the barges mentioned in said lease of October 25, 1938, whichever is shorter, shall itself make said default good, and upon making such default good, second party shall succeed to all of first party's rights in barge 744 mentioned in said bailment lease of October 25, 1938; provided, that first party at any time within one year next after the first payment by second party to make good such default, if any, by repaying to

second party any and all amounts it has paid to make good defaults of first party in installment payments under said [fol. 1539] bailment lease of October 25, 1938, with interest at 5 per cent annually from the time of the payment thereof by second party to Dravo Corporation, to the time of repayment thereof by first party to second party, may redeem all his interest under said bailment lease of October 25, 1938, and revest himself therewith. This right of redemption is not assignable by first party without second party's consent, and adjudication of first party in bankruptcy shall be considered an assignment thereof.

6. Until all of the said notes are paid by second party according to the tenor and effect thereof, second party shall have no other right in said barges save the right of possession, which, until payment of all said notes according to the tenor and effect thereof, shall be terminated by any attempt of second party to alien or encumber the same, or by any seizure thereof by or under color of legal authority, or by the filing of a voluntary petition for adjudication of bankruptcy of second party, or upon adjudication of bankruptcy of second party as a result of the filing of an involuntary petition in bankruptcy against the second party, or by the filing of a petition for debtor reorganization by or for the second party, or by insolvency of second party.

Witness the hand and seal of the first party and the seal of the second party and its signature by its lawfully authorized officer this 10th day of December, A. D. 1938.

[fol. 1540] A. L. Mechling, doing business as A. L. Mechling Barge Lines, First Party, By A. L. Mechling. (Seal.)

Allied Barge Corporation, By O. B. Robbins, its President. (Corporate seal attached.) Attest: W. H. Allen, Secretary.

[fol. 1541] By Mr. Root:

Q. Mr. Mechling, how far is it from Morris, Illinois; that is the Finnegan and Allied Elevators, to the elevators at South Chicago, by way of the Illinois Waterway?

A. 68 miles.

Mr. Root: That is all.

Recross-examination.

By Mr. Enoch:

Q. Mr. Mechling, you remember, you told me that this was the only form of bill of lading you used, referring to exhibit 49?

A. At the present time, yes.

Q. How long have you been using this form of bill of lading; when I say form, I mean the bill of lading with all of the terms and stipulations on it that are set out on exhibit 49?

A. Sometime during the year of 1939 I adopted that bill of lading.

Q. What kind of bill of lading did you have prior to that?

A. I had a little simpler bill of lading; it did not have as many stipulations on it as that has. I cannot tell you just what it is, because I haven't got a copy of it here.

Q. Can you tell me approximately the time when you adopted this form, speaking of exhibit 49?

A. No, I cannot.

Q. Early in the year 1939?

A. I would say about the middle of the year, along about July or August, as I recall.

[fol. 1542] Q. What was the occasion for the change?

A. Well, we ran out of our bill of ladings; and we felt for sometime that we ought to have a little better style bill of lading; and I had my attorney draw that bill of lading up.

Q. Was that the attorney who gave you the advice to which reference was made yesterday?

A. Yes. Well, it was from the same office, not the same attorney.

Q. Now, if you were to get any business under terms which would constitute a departure from the terms set out on exhibit 49, what bill of lading would you use?

A. Well, if it was necessary to make a departure, I may have made some exceptions on that bill of lading.

Q. Have you ever made any exceptions on the bill of lading of which exhibit 49 is a copy?

A. Not since I started to use it.

Q. Have you a traffic soliciting force?

A. I am the traffic soliciting force myself. I am personally acquainted with all of my customers, and they are

acquainted with me; and I have a very small outfit and I manage it myself.

Q. When you answered Mr. Belnap about soliciting business down on the river, you referred to your own activities, personally?

A. That is right; my own personal activities.

Q. When you deliver barges, or grain loads of barges to the consignee in Chicago, when do you get your charges; [fol. 1543] when are they paid?

A. They are paid after the unloading weights—I am paid on the unloading weights.

Q. How long after?

A. I would say abouf two or three days.

Q. Do you have any arrangements with any shippers now whereby you are paid on a weekly basis, or bi-weekly basis, or monthly basis?

A. No, sir. Now, we are paid for each individual load and it is unloaded.

Q. How long has that been the basis?

A. It has always been. Wait a minute; when I used to work for the Turner-Hudnut, they used to pay once a month. But now, since I have been coming into Chicago, it has always been paid as the barges are unloaded.

Mr. Enoch: That is all.

Exam. Taylor: Any other questions?

Mr. Cole: I have one more question: Mr. Mechling, you say you solicit the business; now, after you solicit the business, since you have had this document printed, do you issue either this document or have the man enter into a separate contract, like Allied?

A. In my testimony ahead of this I stated I did not have any other contracts with any other grain company, except this one with Allied. The only contracts I have when I haul [fol. 1544] grain, is that bill of lading.

Q. This bill of lading constitutes the only thing that you issue in the way of a contract or a document on any business that you have received after you solicit it; is that correct?

A. That is correct; and I solicit every elevator on the river.

Mr. Enoch: That is all.

By Mr. Day:

Q. This loan you have from Norris is not covered by a contract other than your written note?

A. That is all.

Q. Is it covered by a mortgage?

A. It is covered by a mortgage on two of the smaller barges.

Mr. Day: That is all I have.

Mr. Enoch: That is all.

Exam. Taylor: Is that all? (No response.)

By Exam. Taylor:

Q. Mr. Mechling, to clear up some questions, as I understand it, although you have two separate agreements, one for a certain period and another for another period with Allied Barge, nevertheless you use this same bill of lading, of which Exhibit 49 is a sample copy?

A. Yes, sir; I do.

Q. And the agreement states that you will use it?

A. The agreement states that they shall use the bill of lading that I customarily use in my towing business.

Q. That bill of lading would show them as a shipper?

A. It would show Allied Grain Company as the shipper, —Allied Co-operative Grain Dealers' Corporation.

[fol. 1545] Q. But in these bills of lading you do not show the rate, do you?

A. No.

Q. Although there is a place for the rate?

A. No, we do not show the rate in the bill of lading; it could be shown. There is no particular objection to it, but it just never is shown and never put on, that I know of.

Q. On those contracts?

A. It does not say that they have to.

Q. Your contract with Allied Barge Company, then, your rate is different than this you have mentioned of record?

A. In the contract with the Allied Barge Corporation it is the same price that we have been talking about here all of the time; namely, one cent for all grain, except 8/10ths of a cent for oats, and then handled in my own barges, they will pay me the going rate for grain shipped in my own barges.

Q. Which you stated on the record?

A. That is right; and in all cases use my bill of lading.

Q. Now, when you deliver the grain to the elevator in South Chicago, do you get a receipt for it from anybody?

A. No.

Q. What do you do with the copy of the bill of lading that you retain?

A. The Captain on the boat mails them in to me after the delivery has been made.

[fol. 1546] Q. You file that, do you, keep a copy of it?

A. I file that; yes, sir.

Q. I wonder if you could furnish us in 15 days, so that we may complete the record in this case, certain shipments that have previously been connected up, both as to the inbound and outbound movement through Chicago. Would that be a very difficult thing for you to do, if we gave you the shipper's name—if we gave you the information contained in these expense bills like this one in the docket?

A. What did you want, the bill of lading on that?

Q. The bill of lading, yes.

A. I think they are all——

Q. Do you think you could furnish them?

A. I could make a copy.

Q. I just want a copy of the original.

A. Copy of the original; yes, those bills of lading could be furnished. If you give me the date and where it was delivered—I would have to check all those.

Mr. Belnap: May we go off the record a minute?

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: Let the record show that Mr. Mechling is willing to furnish a copy of the original bill of lading covering a shipment forwarded November 29, 1939, by the Allied Barge Corporation to Lowell-Hoit and Company, [fol. 1547] South Chicago, Illinois, dated November 29, 1939, freight bill No. 271. The shipment was forwarded in barge No. 745. The next one is a shipment forwarded by Norris Grain Company from Sheffield, Illinois, November 29, 1939, in barge No. 7, unloaded at the Norris elevator: a shipment of corn. That is exhibit 34 on the present record.

Mr. Belnap: The first bill that you asked about was exhibit 32?

Exam. Taylor: Exhibit 32, correct. The origin of this latter shipment appears to have been Chillicothe, Illinois. Now, exhibit 35 of record shows a shipment over the Mechling Barge Line on April 7, 1939, from Patonville, Illinois, from Finlegan Grain Corporation, in barge No. 1108, shipped to Norris Grain Company, unloaded at Norris private and public elevator. Also from exhibit 29 of record, by the Mechling Barge Line forwarded by Continental Grain Company, Peoria, Illinois, November 17th, 1939, to themselves at South Chicago, Illinois, in Barge No. 745, unloaded in Rock Island Terminal elevator. Now, it will be understood that the witness will have ten days to furnish copies of the bills of lading referred to. Mr. Mechling, you do not have any arrangement or agreement with the Eastern roads in connection with grain moving over your line up to Chicago, for the eastern end of the haul?

The Witness: No, sir, I do not.

By Exam. Taylor:

Q. In connection with exhibit 32, which you were looking [fol. 1548] at a little while ago, I was wondering why it was that the Allied Barge Company receipts for the freight charges in connection with that shipment?

A. I do not just understand what you mean. I don't know, unless they used that for some former record that they had to.

Q. How are your freight charges collected?

A. Norris sends me a separate bill with my check, and the barge number on it, when they have the unloading weight; a statement, you might say, with my check after they receive the unloading weights.

By Mr. Belnap:

Q. Is that true as to corn handled in barges of the Allied Barge Corporation?

A. No; I don't know what their individual systems of recording are.

[fol. 1549] Q. Go back to the Norris situation: When at a Norris elevator you deliver grain handled in an Allied Barge Corporation barge, do you then get a check from Norris?

A. Yes; that is treated the same as my barge.

Q. You get a check from Norris?

A. Wait a minute; you say Allied Barge gets it——
Q. Allied Barge Corporation handling the grain.
A. Is it Allied Grain Company grain?
Q. Yes, and goes to Norris.
A. All right; Allied pays me, just as if it had been Continental or any other. See, that is not paid to me; that is paid to the Allied Barge Corporation. The Allied Barge Corporation, I suppose they receipt the bill and they turn around and issue me the check, because what they get is not the same amount I get. They take out the rent for the barge, which is perfectly legitimate. There is nothing wrong with that at all; that is just the way it should be.
Q. The point is, Mr. Mechling,—have you looked at Exhibit 32, which apparently covers a shipment in an Allied Barge Corporation barge, and then you made some statements about receiving a check direct from the Norris Grain Company; and I think that is where you misstate a fact.

Mr. Day: I object to a statement like that from Mr. Belknap.

Exam. Taylor: Let Mr. Mechling state on this record [fol. 1550] everything about this bill shown as exhibit 32.

The Witness: That is grain sold by the Allied Grain Company to Norris; it is their grain, and it is handled in their barge. Norris pay them for the grain I suppose, less the freight; and the freight is paid to the—now, I am kind of on the spot here; I am telling you what I think. They pay the freight to the Allied Barge Company, and they pay for the grain to the Allied Grain Company. The Allied Barge Company then pay me for towing their barge into Chicago.

By Mr. Belnap:

Q. The point is, Mr. Mechling, you receive nothing direct from Norris?
A. No, sir.

Mr. Day: Object to the question, as leading.—Tell the Examiner what the facts are; don't listen to Mr. Belnap's statement.

Mr. Belnap: I think the record obviously shows, when you read it, that there is some confusion. We all know what the facts are, and I am trying to do what I can to straighten it out.

Mr. Day: I think the Examiner is trying to set him right.

By Exam. Taylor:

Q. Have you stated everything about this?

A. Yes.

Q. It is shown at the bottom of page 11-39; paid to Mechling, per W. H. Allen; you did not receipt for that?

A. No.

[fol. 1551] Q. Well, how about the bill of lading that covered that; you signed the bill of lading?

A. I signed the bill of lading, yes. See, the way the bill of lading is handled, the elevators have my block of bills of lading. We have a mail box out at the dock. When my boat comes and picks up that barge, they sign the bill of lading, leave two copies, and they take one copy because that shows where the barge is going to go. That is their instructions; that is very satisfactory and I see no fault.

By Mr. Belnap:

Q. Might I inquire, Mr. Mechling, those barges are Allied's own barges which you placed their earlier; and the grain is loaded in the barge before your captain or pilot signs that bill of lading?

Mr. Day: Object to the question, as leading.

By Mr. Belnap:

Q. Will you just state what the true facts are, as to the time when the bill of lading is signed, in relation to the time when the barge is placed at the Allied for loading and the time when the grain is loaded, whatever the true facts are, you just state it.

A. I think that is all in the record, but I will repeat it; I will the whole operation——

Q. No, just that fact as to the placing of the barge.

Mr. Day: Let him make his own statement, now. Don't try to tell him what to say——

The Witness: I call the elevator to see if they got a [fol. 1552] barge load of grain. Yes, they have; they tell me all right, place a barge there. They load the barge; and after the barge is loaded, they make out a bill of lading and put it in the box, where my captain takes it and signs the bill of lading and leaves two copies, and takes one.

By Mr. Belnap:

Q. Is sometimes a barge there with grain in it for some time before a bill of lading is signed?

A. Yes.

Mr. Belnap: That is all.

By Mr. Day:

Q. Sometimes these barges contain loads for more than one elevator?

A. Very seldom.—You mean here in Chicago?

Q. Yes, going to Chicago.

A. That is not very general, but it does happen once in a while.

Q. For instance, the one covered by exhibit 32, which was oats and beans, and left Morris on the 25th of the month, and was unloaded of the oats at the Irondale elevator on the 27th; and two days later the barge unloaded some beans at the Norris elevator?

A. I think that probably if you check that up it would be over Sunday, or something; there is two days. Without a calendar, I don't know what those days were.

Q. You know yourself that the 30th was Thanksgiving, and that was on Thursday.

A. Well, that is the answer to it.

[fol. 1553] Q. That was the last Thursday of the month anyway?

A. Yes.

Q. You referred in the course of this later discussion to a barge 745; whose barge is that?

A. That is an Allied barge.

By Mr. Enoch:

Q. Mr. Mechling, I call your attention to exhibit 29, which purports to be your receipt to the Continental Grain Company dated November 18, 1939.

A. Yes.

Q. Who signed the original of which this exhibit 29 is a copy?

A. Well, they handle theirs just like Allied. That was receipted in my office.

By Exam. Taylor:

Q. By whom?
A. I imagine, by the secretary.

By Mr. Enoch:

Q. You mean your office at Joliet?
A. Joliet, yes.
Q. When was the form of the document prepared?
A. The form of the document is prepared in this particular case in Norris' office. I provide those there. I cannot make them out—well, that is Continental. No, now, it is different on Continental. These are made out in my office for Continental. We have not so far supplied them with any of those blanks. When we get the bill of lading we make out this freight bill in my office for Continental, and send that with their copy—no, their copy of the bill of lading is sent from the elevator; we send these four copies [fol. 1554] to the Continental elevator. They issue the check and send it with the copies back to me.
Q. The transaction represented by exhibit 29 was handled in the way you have described it?
A. Yes, sir.
Q. Now I call your attention to exhibit No. 33.
A. Yes.
Q. Now, I ask you where the form of that document was prepared, speaking of the original?
A. I furnished the forms to Norris' office; they make them out.

By Exam. Taylor:

Q. Norris Grain Company?
A. Norris Grain Company's office; they would have to mail me the weights. Just to save a little time, we furnish those to their office, they make them out and send them.

By Mr. Enoch:

Q. Was the original of exhibit No. 33 signed by you?
A. I suppose it was signed—no; let's see: They issue these, along with a statement of this particular barge load; and I sign that statement as having received the money.
Q. Is this a possibility: That this original of exhibit 33

is made out at the point of shipment, Henry, Illinois, or some down river office of Norris Grain Company?

A. No, I do not—it could be made out there.

Q. Has that been done?

A. It has been done; yes, that is the way the transaction [fol. 1555] should be done. And I have tried to keep supplies of these freight bills at these local elevators; but they at times run out.

Q. At the origin point?

A. That is right.

Q. Then the Norris Grain Company, by whoever the shipper happens to be, makes out a form of bill of lading, and form of receipt for you at the point of origin?

A. Yes.

Q. When the shipment identified on exhibit 33 came to Chicago, who paid you the freight charges?

A. Norris Grain Company paid the freight charges.

Q. Were you paid by check—were you paid at Chicago, or paid at origin point?

A. Well, it was—it could not be paid only on—they pay it on an estimate; that is, these freight bills have to be made out on an estimate, whereas I am paid on an unloading weight; it has to be all corrected as soon as the barge is unloaded.

Q. Do you get an original payment at the time the shipments start from the origin point, and then later an adjustment is made?

A. No; they make the adjustment and then send me the check.

Q. Maybe the adjustment is the other way, you would have to send them a check; does that happen?

Exam. Taylor: I think he is confused.

[fol. 1556] The Witness: No, they make the adjustment and then mail me a check for the freight.

By Mr. Root:

Q. You do not get any money at all until the freight arrives; is that right?

A. That is correct.

By Mr. Enoch:

Q. What does this "Prepaid" mean?

A. I don't know.

Q. And what does "Prepaid" mean on exhibit 34?

A. I don't know; I am not familiar with just their method of handling of that thing. All I can say is that I don't know what their method is of handling it.

Q. You mean the Norris Grain Company?

A. That is right.

Q. Do you have any dealings with this representative whom we talked of yesterday, in Lowell-Hoit's office?

A. No.

Q. In so far as the freight charges due for the towing in connection with the shipment listed on exhibit 34, they were paid to you, as I understand it, at Chicago after the arrival of the shipment?

A. That is the time I got my check; I don't know just how they handle that in their office; I am not familiar with it.

Q. Is that the same situation on exhibit 35?

A. That is the way that has been carried on for quite some time.

Q. And the same is true of exhibit 36?

[fol. 1557] A. Yes, sir.

Q. Now, when you bring this barge into Chicago and deliver the barge to the elevator there, you are through with the transaction, are you not?

A. Yes, sir; that is as far as my contract goes.

Q. Except when they send the money to you a little later?

A. Yes, that is right.

Mr. Enoch: That is all.

Exam. Taylor: Is that all from this witness? (No response.) Any further cross-examination of this witness? (No response.) The exhibit is received.

(Exhibit 49, Witness Mechling, received in evidence.)

Exam. Taylor: The witness is excused.

(Witness excused.)

Exam. Taylor: The next witness.

C. E. Childe was sworn and testified as follows:

Direct examination.

By Exam. Taylor:

Q. Will you give your name to the reporter?

A. My name is C. E. Childe. I live at Omaha, Nebraska. I appear in this case as chairman of the traffic committee

of the Mississippi Valley Association, protestant. I have had that position for something over five years, and I have had something over 30 years' experience as a traffic representative of shippers in proceedings before the Interstate [fol. 1558] Commerce Commission and other bodies. I have made a study of the rates involved in this proceeding, and have compared—and have prepared some exhibits, which I have distributed. May these be numbered, off the record?

Exam. Taylor: Off the record.

(Discussion outside the record.)

(Protestant's Exhibits 50 to 58, inclusive, marked for identification.)

The Witness (Continuing): Exhibit No. 50 shows the average carload weight of grain, and also of carload freight as a whole terminating on class 1 carriers railroads in the Eastern District, in the year 1938, which in that respect is a typical year. The average weight, it will be noted, on each variety of grain is shown: Wheat, 44.4 tons; corn, 42.6 tons; oats, 31.6 tons; rye and barley, 39.5 tons. The average of all grain, wheat, corn, oats, rye and barley, 41.2 tons per car, as compared with the average loading of all carload freight in the Eastern District the same year, 36.9 tons. If wheat and corn alone were taken, the average weight per car would be 43.3 tons. That is not shown on the exhibit.

Exhibit No. 51 shows the earnings per ton-mile and per car-mile based on the average load of 41.2 tons for car-mile earnings; which, by the way, I am using throughout these exhibits as the average carload of grain in the Eastern District for the purpose of computing car-mile earnings. [fol. 1559] The earnings are shown on exhibit 51 for both the proportional rates which apply on grain from beyond, whether shipped by rail or water, and the so-called local rates which are proposed to apply on the ex-barge grain, but not on ex-rail or ex-lake grain. The rates are shown from Chicago, Peoria, and St. Louis to the typical destinations in Central Freight Association, Eastern Trunk Line, and New England Territories. On page 2 in the last section of the exhibit I show the average earnings per ton-mile and per car-mile on all freight in the Eastern District; also the average haul per railroad. I show in ad-

dition to that the average haul per railroad and the average earnings per ton-mile of the Great Lakes region and the central eastern region separately. The information is not available as to those regions separately as to car mile earnings. All freight, it should be understood, includes less than carload and carload revenue freight. The earnings for that per ton-mile and per car-mile would be somewhat less on carload freight if it could be computed separately. The only information available on that from the Commission's reports is that the less than carload freight in the Eastern District in 1938 was something less than two per cent of the total tonnage; and the revenue on the less than carload was something over 8 per cent.

This comparison is made to show that in relation to revenue freight as a whole in the Eastern District, and particularly as to the carload freight, the earnings on the [fol. 1560] present proportional rates on grain are higher than average, and the earnings on the local rates if applied to this grain would be very much higher than the average. I call particular attention to car-mile earnings shown in this and other exhibits which I shall offer here, because I believe they are more significant than the ton-mile earnings. The Commission has said in a recent decision in I & S 4645, for example, the Blackstrap Molasses case decided December 4th, 1939, that it is foolish to place reliance on ton-mile earnings, but car-mile earnings afford "A much fairer basis—" the Commission stated, "A much fairer basis is that found in the earnings found per car-mile and per train-mile." It will be noted that the car-mile earnings on grain are high indeed, as compared with the average on this exhibit.

By Mr. Enoch:

Q. What do you refer to as high car-mile earnings?

A. Car-mile earnings as shown on page 1 of exhibit 51, and the upper part of page 2, as compared with the car-mile earnings of 25.1 cents for the Eastern District as a whole.

Exhibit 52 shows earnings per ton-mile and per car-mile from Morris, Illinois, as a typical point of origin in Illinois west of Chicago, to typical destinations east of Chicago. These are the same destinations as appear in exhibit 51.

By Exam. Taylor:

Q. These are through rates, are they, from Morris to these destinations?

[fol. 1561] A. They are either the through rate or the lowest combination.

By Mr. Enoch:

Q. By through rate, I take it, you mean the single factor?

By Exam. Taylor:

Q. The joint through rate, or the combination; how did you construct your combination?

A. Taking the rail factor west of Chicago and adding it to the rail factor east of Chicago. The Morris rates are in every case, whether they are shown as single factor rates or not, the full combination of those eastern and western factors. In fact, that is true from all northern Illinois points of origin. The through rates are the combination, whether they are named as single factor rates or not.

Q. On the rate-break theory?

A. Yes, sir; they are all on the rate-break theory; using, however, as western factors either the proportional or in some cases what they call specifies.

By Mr. Belnap:

Q. Have you checked that out to all destinations, Mr. Childe, that very general statement you just made?

A. From northern Illinois?

Q. Yes.

A. I checked it out from all the points shown on Mr. Tannehill's exhibits; at least, I checked a great many of them; and if there are exceptions, I didn't find any. I call attention to the fact that the car-mile earnings as shown in exhibit 52 and the ton-mile earnings also, are on higher levels even than the earnings as shown on the rates from Chicago in exhibit 51.

[fol. 1562] Exhibit 53 explains why the rates for the longer distance Illinois producing points to the east are generally higher than the earnings from Chicago to the east. It shows ton-mile and car-mile earnings of the western factors of the through rates from representative Illinois points to Chicago. I have taken for representative points

in this exhibit the nearest and the farthest point on each railroad, as shown in Sperry's exhibit 13 in this proceeding. I think the exhibit is self-explanatory. Considering the two as parts of through rates, I think it is evident that earnings both per ton-mile and per car-mile are exceedingly high. I call your attention also to the block of rates at the right of the exhibit, headed 'Non-transit;' those are the Illinois intrastate or local rates which have been referred to in this proceeding. And it will be noted that considering those as parts of through rates, the earnings would likewise be very excessively high.

Witness Tannehill in his exhibit No. 11 made some comparisons of local grain rates from Chicago with the eastern class rate scale; and if what he termed the Western Trunk Line and Southwestern grain scales. Those so-called grain scales are not actual grain rates in Western Trunk Line and Southwestern Territories. Exhibit 54 is a comparison which shows the present domestic grain rates, local and proportional, from Chicago and the local rates from Morris to representative eastern destinations, and the percentage those rates bear to the actual class 1 rates. It will be [fol. 1563] noted that the Chicago local rates on grain range from more than 24 per cent to 18½ per cent of class 1. The average on the stations shown here as typical is over 20 per cent. The Morris local rates are an even higher percentage of class 1. They range from Illinois 28 per cent down to 20 per cent, an average of 24 per cent of class 1. The proportionals from Chicago range from 18 per cent to slightly under 15 per cent of class 1, and average about 17 per cent of class 1.

Exhibit 55 is a comparison of typical local and proportional grain rates as now in effect from points of origin in Western Trunk Line Territory to various markets, Chicago, Peoria, St. Louis, Kansas City, and Duluth, which were established as the result of the Commission's decision in the Western Grain case, including the general percentage increase. Those rates are compared with the class 1 rates, which are likewise rates prescribed by the Commission in the Western Trunk Line class rate case.

By Exam. Taylor:

Q. All rates you have shown to the present do include the percentage increase?

A. Yes, sir; they do. And they are actualiy in effect. Note that the local rates from the country points to markets in Western Trunk Line Territory are lower per cent of class 1 than the present rates from Chicago to the East in relation to Class 1. The range of the rates I have shown here as typical is from 16 per cent plus down to 13 per cent minus, which is very close to the percentage relationship the Chicago proportionals to the east bear to the class 1 [fol. 1564] rate. The proportional rates as shown on exhibit 45 in effect in Western Trunk Line Territory bear a much lower percentage relationship to class 1 than the local rates. The range is down as low as five and a fraction per cent, an average of less than 10 per cent of class 1; whereas the proportionals from Chicago to the east, as I have already stated, are about 17 per cent of class 1.

By Mr. Enoch:

Q. Sort of a pitiful situation, isn't it, when you refer to a rate as a high rate that is 17 per cent of first class?

A. Whom are you pitying, the people who have to pay them?

Q. Pity the railroads, the ones whom you know I am pitying.

A. I have not pitied anybody, so far. Before I leave exhibit 55, it might be well to note that what Mr. Tannehill called the Western Trunk Line scale in his exhibit 11 is in every case higher than the actual rates as shown on this exhibit.

By Mr. Day:

Q. What Mr. Tannehill called the Western Trunk Line scale prescribed by the Commission in the Western Grain case, isn't it?

A. No; they did not prescribe a scale; that is what I am trying to make clear. Taking exhibit 55, the Western Trunk Line scale, according to Mr. Tannehill, reading from Marshalltown down to Paynesville in the order shown on the exhibit would be 22, 22, 22, 23, 24, 26, 27, 28. You will notice that the actual rates are in every case less than 90 per cent of what he called the scale. As to the propor- [fol. 1565] tional rates, I will give just one illustration: Take Sioux City to Chicago, the first proportional rate shown; the Western Trunk Line scale in Mr. Tannehill's

exhibit for 498 miles would be 28 cents, whereas compared with a rate, with a 16 cent proportional rate. In other words, the proportional actually in effect there is 56 per cent of the so-called scale.

Mr. Enoch: May I interrupt to ask just what the purpose of this is?

The Witness: What do you mean?

Mr. Enoch: These last remarks of yours; is that refutation of something Mr. Tannehill said?

The Witness: No, that is in rebuttal of Mr. Tannehill's exhibit 11.

By Mr. Day:

Q. You understood Mr. Tannehill's scale to cover proportional rates, did you?

A. No. Exhibit 56 shows ton-mile earnings on the proportional rates prescribed by the Commission in the Western Grain case, increased 5 per cent.

By Mr. Bradford:

Q. Mr. Childe, may I inquire on exhibit 55 where you arrived at your mileages shown on the exhibit?

A. Yes; they were taken from an exhibit——

Q. Are they the short line mileages, made over the shortest possible routes over which a carload of freight can be taken?

A. They may be in some cases a mile or so off the short [fol. 1566] line; I did not check them, I took them from exhibit No. 92 in I & S 4208.

Mr. Enoch: Apparently nothing was right in that record.

The Witness: They may be slightly off, but they are approximately correct; and they are offered here at least to show approximately what the ton-miles are.

Mr. Bradford: What was referred to ordinarily in that case as the trick mileage.

The Witness: They may be tricky, but they are not far off. They are close enough to establish the point I have in mind here, that those proportionals are on a very much lower level than the proportionals east of Chicago. Exhibit No. 57, I have undertaken to show what would be reasonable rates on grain from Chicago and other gateways to the east, based on the following assumptions: First, that aver-

age earnings of 30 cents per car-mile would be reasonable. This is approximately 20 per cent higher than the average earnings of all freight in the eastern district, less than carload and carload, as I have shown on my earlier exhibit.

By Mr. Day:

Q. Which earlier exhibit, 51, page 2?

A. Yes, I think that is it. It follows, I think, that 30 cents a car mile would provide liberal average earnings if applied to grain, that being a low grade heavy loading staple commodity. And I took the figure 30 cents, instead of 25 cents, so as to allow for circuitous hauls, and every other con-[fol. 1567] tingency that I think might properly be considered in establishing a scale of reasonable rates on grain. The second assumption on which this scale is based is that the average loading weight is 41.2 tons per car. There again I think that that is a conservative figure, because average loadings out of Chicago to the east may reasonably be assumed as greater than the Eastern District as a whole.

Mr. Enoch: I think I will object to this type of testimony. I do not understand that you are contending, or your counsel, that there are before the Commission in this proceeding any issues relating to through rates from these origin points along the river to destinations in the east. You do not contend such issues as those were in there.

Exam. Taylor: Any reply to make to that? —The exhibit will be received for such value as it may have.

The Witness: (Continuing) Third, I assumed an average haul of 267 miles in the Eastern District. I arrive at this by taking 170.7 per cent of the average haul per railroad in the Eastern District, which was 156.4 miles in 1937. This 170.7 per cent being the percent for the United States as a whole which the average haul of all railroads as one system bore to the average haul per railroad.

By Mr. Enoch:

Q. May I ask, are these local rates you are talking about?

A. I am making a scale here for comparison with the rates here under consideration from Chicago and other gateways to the east.

[fol. 1568] Q. Local rates?

A. Local, proportional, or any other name you wish to apply to them.

By Mr. Day:

Q. Local or proportional, you said?

A. Yes. Fourth, I assume a progression of rates; that is, for long versus short distances on the basis of the proration of the eastern class rate scales would be reasonable. That is the relationship widely observed in rate progressions in the east today, both on classes and commodities. Taking for my assumed average haul of 267 miles 30 cents per car mile, that would make a rate in the block 261-280 miles of 10 cents per hundred pounds, yielding, you will notice, for 275 miles exactly 30 cents a carmile. I have shown, aside from this average haul, the rate only in 100 mile blocks, as I considered that enough to be illustrative. This progression of rates would yield per carmile earnings from 53.6 per 100 miles down to 15.1 cents for 1200 miles, figures being shown in the right-hand column of the exhibit. May I be off the record?——

Exam. Taylor: Yes, off the record:

(Discussion outside the record.)

Exam. Taylor: We will recess at this time until 2 o'clock, for luncheon.

(At 12:30 o'clock P. M. a recess was taken until 2 o'clock p. m.)

Afternoon Session

[fol. 1569] The hearing was resumed pursuant to recess.

2 o'clock P. M.

Exam. Taylor: Gentlemen, let us come to order. Proceed Mr. Childe.

C. E. Childe, resumed:

Direct examination:

The Witness (Continuing:) At the noon adjournment I had just finished explaining exhibit 57. If the scale I designed the reasonable rate or grain were applied from Chicago to the typical eastern destinations as shown in my preceding exhibits 51 and others, it would produce from Chicago to Detroit 10 cents, Columbus 10½ cents, Cleveland 11 cents, Pittsburgh 12½ cents, Baltimore 17 cents, Philadelphia 17½ cents, New York 18½ cents, Boston 19½ cents

per 100 pounds. Those rates are respectively the following percentages higher than the present proportional rate applying on ex-barge grain from Chicago: 55, 57, 68, 72, 35, 37, 40, 43. In other words, the present ex-barge proportionals or reshipping rates from Chicago are higher than what I have computed to be reasonable grain rates by the percentages just named.

By Mr. Enoch:

Q. You mean reasonable local rates?

A. Reasonable rates; I am not distinguishing between local and proportional in this study. The local rates from Chicago which are proposed to be applied on the ex-barge [fol. 1570] grain would be the following percentages higher than what I have just computed to be reasonable rates to the destinations named: 70, 90, 82, 128, 85, 85, 86, and 87. The book value of the roads of the Eastern District in the year 1937, as shown in Commission's annual statistical abstract, taking as book value the value of road and equipment, material, supplies and cash, amounted to $10,780,000,000, in round figures.

By Mr. Enoch:

Q. Is that figure set out in the report, the one you have just given?

A. Yes; they are shown under those heads. I can give you the total under those separate accounts, if you wish.

Q. No, all I am asking, is that computation basis on what the statistical abstract shows?

A. That is copied from the statistical abstract. The net railway operating income of the class 1 eastern carriers—I am taking class 1 eastern district in these comparative figures—was $247,193,951. That amounts to a rate of return of 2.3 per cent on the book investment as I have just given it. The freight service revenues, those revenues from freight service, the same carriers, the same year was $1,465,622,863. If all revenue freight were called upon to pay as much as 80 per cent over the average, which is comparable to what these local rates would yield on grain traffic, it would have increased for the year 1937 the net railway operating income by $1,172,498,290; and that would have produced a rate of return on the book value as I have just [fol. 1571] stated it exceeding 13 per cent.

I have not talked about export rates up to this time, which as the record shows are 16 cents Chicago to Baltimore, 16½ Philadelphia, 17½ to New York, proportional. Those rates are within a cent of what I have computed to be reasonable rates on grain from Chicago to those destinations. If export grain were loaded to an average of 43 tons per car, instead of 41.2, as I have shown to be the average of all grain, then under the present export proportional rates the earnings would be normal in comparison with that on all freight. That is to say, such export grain would pay then on a basis yielding as high revenues per car-mile as the average of all freight computed in the manner shown in exhibit 57.

My exhibit 58 is a comparison of barge-rail and barge-lake-rail rates from Morris, which I have again used as a typical Illinois River point of origin, with all rail and rail-lake-rail rates on grain to typical destinations in eastern territory. The water factors I have used were obtained by me from the Continental Grain Company, and will be explained in detail in an exhibit to be offered by Mr. Schimmel. I don't know personally what those rates were, and got them from inquiry; and I have used them because they will be in the record in that manner.

By Mr. Enoch:

Q. Are you setting out published rates here?

A. Not the all-water rates; they are not published. I [fol. 1572] have to obtain them by inquiry. I have shown, as you will note, some interior destinations beyond the Lake Erie ports; namely, Pittsburgh, Youngstown, Elmira and Scranton, as well as the Atlantic Ports, Baltimore, New York and Boston. I call your attention to the column at the extreme right showing the proposed barge and rail rates which are in every instances materially higher than the all rail rates from Morris to the same destinations; and, of course, very much higher than the rail-lake-rail rates or the barge-lake-rail rates. At present the barge-rail rates, it will be noted, are rather closely comparable with the rail-lake-rail and the barge-lake-rail.

By Exam. Taylor:

Q. They are not joint through rates, of course?

A. No; these are all combination rates.

Mr. Enoch: I do not wish to interrupt you too much; but will you tell me who is proposing these barge-rail rates?

The Witness: By that I mean taking the proposed factors east of Chicago; that is to say, the local rates from Chicago to these destinations and adding to that the water rate from Morris to Chicago of 3.875 per hundred.

By Exam. Taylor:

Q. That is not published?

A. No; it has been explained on the record here just what it is. That is what I call the proposed barge-rail rate.

By Mr. Enoch:

Q. Do you understand anybody in this case proposed it? [fol. 1573] A. Yes; I understand that is what the proposal is here.

Q. By whom?

A. By the respondents, to make the barge-rail rates come up to that basis. Exhibits 51 to 58 were prepared by me, or under my direction; and I think they are correct, and I offer them in evidence.

Exam. Taylor: Objections may be made to them.

Mr. Enoch: I want to object to such of these exhibits as contain data based on the assumption that there is a present barge rail rate, or that anybody is proposing a barge-rail rate.

Exam. Taylor: I asked him about that, and he told me it is an unpublished rate so far as Chicago is concerned——

Mr. Day: I want to object to the exhibits in so far as they purport to show distances, because there is no authority shown either for distances or for the routes, as required by the Commission's rules of practice.

The Witness: Yes, the tariff authorities for the mileages appear on here.

By Mr. Day:

Q. You say the tariff authority does appear?

A. Yes.

Q. Where is the tariff authority on exhibit 56, for instance?

A. I will make an exception of that. As I stated to Mr.——

Q. You haven't got it there, have you?

A. No; as I stated to Mr. Bradford, those were taken from Exhibit 92 in I & S 4208. I know they are approxi- [fol. 1574] mately correct. I do not have all these railroad distance tables, but I checked them with the distances in the official railway guide; and I know they are approximately correct.

Mr. Day: The Commission's rules of practice, may I suggest to the Examiner, require that where distances are indicated on an exhibit the tariff authority and junctions and distances between junctions should be shown.

Mr. Belnap: The Examiner, the respondents did not observe that rule.

Mr. Day: I object to any argument; but let us take up one thing at a time.

Mr. Belnap: It seems to me that what is sauce for the goose is sauce for the gander.

Mr. Day: There are several other exhibits that are constructed in exactly the same way.

The Witness: I think you are quite mistaken. What exhibit do you have in mind?

Mr. Day: Well, I will specify all of them: 55 shows no junctions or mileages between junctions.

The Witness: True, there aren't any junctions; nobody shows junctions in these exhibits, as far as I know, Mr. Examiner.

Exam. Taylor: Which other?—You say 55 and 54.

Mr. Day: I will tell you all of them: I specified 56 in the first instance; then 55, and then 54, 53, 52, and 51, all contain mileages without observing the Commission's rule.

[fol. 1575] Exam. Taylor: Well, as to 56 he refers to an exhibit in another case before the Commission. That gave the identical distance, didn't it?

The Witness: Yes. The exhibits also refer to the short line distances that Mr. Kelly put in for the eastern carriers in another proceeding, 26712. He did not specify in his exhibits the junctions, but he merely testified that those were the short line distances between the points in the east that he had in his exhibits. I am merely taking his own compilation, with those mileages. I have checked them with the distances shown in the respondents' exhibits in this proceeding, and they agree exactly in all but one or two cases, I noticed there was a very slight difference.

Mr. Day: On that, I submit that there is no similarity between Mr. Childe's exhibits and the exhibits submitted by the respondents in this case. I know nothing whatever about any other exhibit Mr. Kelly put in in some other case, or what that covered. In any case, it does not meet the objection I make as to non-compliance with the Commission's rules of practice.

Exam. Taylor: Mr. Childe, will you comply with the rules within ten days on these exhibits?

The Witness: I cannot tell what junctions were used by the respondents in this case, or in 26712, in computing their short line mileages. It would be physically impossible for me to go through all the computations necessary to supply [fol. 1576] that information.

Exam. Taylor: Well, the objection is overruled, and the exhibits will be received, subject to those objections; and the objections will be noted on the record.

Mr. Day: Exception will be noted also?

Exam. Taylor: Exception noted.

(Protestants' Exhibits 50 to 58, Witness Childe, received in evidence.)

Exam. Taylor: Is that all?

The Witness: That is all.

Exam. Taylor: Any questions by protestants?

Mr. Root: None.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Childe, do you or does your organization that you are here representing represent either the Norris Grain Company, Dewey Grain Company, Continental Grain Company, Allied Cooperative Grain Company, or the Finnegan Grain Company?

A. I couldn't tell you whether they are members of the association or not. I do know that the Norris Grain Company; that is to say, some of the Norris Grain interests have membership in the Mississippi Valley Association. Mr. Hunt, the president of the Farmers Grain Company there, and Mr. Allen, are not only members of the association but have representation on the traffic committee.

[fol. 1577] Q. Are any of these carriers on the Illinois waterway members like Mr. Mechling or this Hay Company, or the Allied Barge Company, or this Dewey Grain Company; are any of those members of your organization?

A. I don't know.

Q. These shippers that you mentioned were what firm, now, that was here, as a shipper along the waterway or a member of your organization; you said Norris?

A. The Farmers Square Deal Grain Company.

Q. You referred to him as a shipper?

A. You asked me if he was a member——

Q. No, I asked you whether any of the shippers of grain by the Illinois waterway are members of your organization; and then I went further and called out these names to you: Norris Grain, Dewey, Continental, Cooperative Allied Grain Dealers Association, Finnegan, or Cargill; were any of those members?

A. I don't know.

Q. You don't know whether any of those people are?

A. I told you I didn't know.

Q. On exhibit 11 you referred to what was there shown as the Western Trunk Line grain scale, and the Southwestern grain scale. When one speaks to you of the Western Trunk Line grain scale, what do you understand that person is talking about, Mr. Childe?

A. I would have to know more about it before I would say I understood what he was talking about. There isn't [fol. 1578] any such scale actually in effect.

Q. When one speaks to you of the Southwestern grain scale that is shown on exhibit 11, in column 10, what do you understand from that that that man is referring to?

A. The same answer.

Q. You wouldn't know in either event what the man is referring to?

A. Not unless I had more information to go by.

Q. Then from the exhibit merely showing in column 7 and column 10,—I believe that some of your exhibits would show that you called out at one time what the rates would be, did you not, if they were made on the basis of the Western Trunk Line scale and the Southwestern scale, on your direct?

A. Yes; that is what Mr. Tannehill characterized as those scales.

Q. Now, if you do not understand at all what a man refers to when he talks of the Western Trunk Line scale, or the Southwestern scale, how was it physically possible for you to compute anywhere what a certain other distant rate would be?

A. I took the rates Mr. Tannehill showed on his exhibit for comparable distances.

Q. Will you please show what rates are shown on Mr. Tannehill's exhibits that meet with the distance that you had on your direct testimony, where you said that?

A. Well, there are quite a number shown on there that come within the same mileage block.—What one do you have in mind?

Q. I don't know which ones you have in mind; you evi- [fol. 1579] dently computed some rates yourself, though, in your direct testimony; and you said if the Western Trunk Line scale were effective this would be the rate; and you said a certain rate.

A. Perhaps I can illustrate it this way: I referred to the rate from Sioux City to Chicago, proportional, 16 cents per 100 pounds, distance 498 miles. And I said that was 56 per cent of what Mr. Tannehill called the Western Trunk Line scale. If you will look on exhibit 11, Buffalo, New York, you will find the distance there shown 498 miles, Western Trunk Line scale 28 cents.

Q. Buffalo to what?

A. Chicago to Buffalo.

Q. 498 miles, check; now, go on down to——

A. Then go over on column 7, the same line as Buffalo; you will find the Western Trunk Line scale there shown is 28 cents.

Q. Yes.

A. So I took 28 cents as the Western Trunk Line scale for 498 miles, and computed the 16 cent rate from Sioux City to Chicago to be 56 per cent.

Q. Now, that is Sioux City to Chicago; what is that termed, what kind of a rate is that, Sioux City to Chicago?

A. That is a proportional rate.

Q. Is that a proportional rate?

A. Yes.

Q. Mr. Childe, were you in the Western Grain case?

A. Why, I was in some phases of it, I believe; I was not [fol. 1580] through the whole thing.

Q. And you were in the Southeastern Grain case?

A. Yes.

Q. Throughout?

A. No, I did not attend all the hearings.

Q. But in those Western Grain cases, did you ever hear anybody check a proportional rate, or try to arrive at a proportional rate by checking first any other kind of a grain scale, any direct mileage scale of a grain scale?

A. Well, I would hesitate to say that there was any conceivable comparison that was overlooked in any of those grain cases.

Q. For instance, you as a grain man, if you took column 7 in exhibit 11 and you found—represented any scale of grain rates for 498 miles, could you as a grain traffic expert compute what any kind of a proportional rate for 498 miles would be?

A. Not unless it was based on a scale; but I could make a comparison, of course. You do not limit your comparisons to specific rates. You can compare them with mileage rates, or anything you want to.

Q. Well, a proportional rate that breaks from say Chicago, a proportional rate east of Chicago, running to a destination that is 498 miles east of Chicago, would you gauge the level of that proportional rate as such, as a proportional rate now applicable on something else that came into Chicago upon any scale, whether we call it Western [fol. 1581] Trunk Line, or Southwestern scale of rates?

A. I would not use the scale of rates as proving that the proportional rate assessed to Chicago was either too high or too low, if that is what you mean. It does illustrate the fact, however, that proportional rates as such, to the extent they have been prescribed by the Commission, are invariably on lower levels than the so called local or gathering rates. The rate out of Chicago, or any market, which applies on grain that has come into that market from beyond, in my opinion, should be on a lower level than the local gathering rates from the country points into the markets. And the Commission in all the cases that I know about has agreed with that, and has definitely established proportional rates or rates applying on shipments from beyond on lower levels than the local rates applying on grain from the country into the market. That is why I thought Mr.

Tannehill's comparisons were inept, inappropriate in exhibit 11.

Q. When he refers there to Western Trunk Line grain scale, and to the Southwestern scale, and the general Southeastern Grain case, were those scales referred to quite frequently as a base for comparison?

A. I think what Mr. Tannehill has in mind is this: That in the Western Grain rate case the Commission used as a basis for the gathering rates from the country points into the markets a sort of a tentative scale. It never was a scale of rates applying as such on any traffic, but they com- [fol. 1582] puted a scale, sort of a measuring stick, as it were, for those country rates, the rates from the country into the market. But the rates they actually established were lower than those scales. That is what I am trying to make clear by these exhibits. Now, Mr. Tannehill, if I gather correctly what he is trying to show here on exhibit 11, is comparing what he calls those scales with the rates that you are trying to have approved for application from Chicago to the east.

By Exam. Taylor:

Q. On what kind of traffic?

A. On traffic coming into Chicago by barge. It seems to me the comparison is quite inappropriate.

By Mr Cole:

Q. But besides your view that the comparison is inappropriate, you do understand that there is such a thing as this Western Trunk Line scale and the Southwestern scale?

A. It is not in existence at all.

Q. Didn't I understand you just to say that that was the base, or furnished the base for comparison, or a base from which there was computed the rates from the country origins into the first markets in the west?

A. It was just a set of figures that was put down for comparative purposes and not used. I do not think a scale, so-called, is such a nebulous thing as that.

Q. The Ex-TM and the Ex-Northwest proportionals that we show in exhibit 11 from Chicago to Columbus, Detroit, Cleveland and Pittsburgh, do you know whether or not both [fol. 1583] the Ex-Northwest and the Ex-TM proportionals

east of Chicago were prescribed by the Interstate Commerce Commission?

A. Yes.

Q. They both were?

A. They were as I understand it. At least, I read the decisions; I did not participate in those Southwestern cases.

Q. On Exhibit 55 there is a rate shown of 20 cents for 324 miles from Chariton, Iowa, to Chicago, Illinois; right under that there is another rate of 19½ cents shown from Sheldon, Iowa, to Kansas City, Missouri, for 10 miles greater distance. Do you know what conditions existing in the west furnished the background for a different level of rates such as that?

A. Yes; the Sheldon, Iowa rate is no doubt a local rate from Sheldon to Omaha, plus the proportional from Omaha to Kansas City as the maximum.

Q. Then, Mr. Childe, some of these rates that you refer to as western rates, and that you point to as being lower than this nebulous Western Trunk Line scale, are not some of your rates composed of this local factor to the market plus the proportional that was effective between markets?

A. Well, let's see; the rate from Sheldon to Kansas City, the rate from Storm Lake, Iowa, to St. Louis, possibly from Paynesville, Minnesota to Chicago, might come in that category; that is, they might be combinations on markets. The others would not be.

Q. Well, wherever you have got Chicago as a destination [fol. 1584] you are going to have a combination of a local into some market and a proportional rate between markets?

A. No; take Marshalltown to Chicago, there wouldn't be any intervening markets there; or any other Iowa points to Chicago.

Q. Oh, no, not Iowa.

A. Take Grainfield, Kansas to Kansas City, there is no intervening market. The fact is, Mr. Cole, that the rates actually in effect in Western Trunk Line Territory from country points to the primary markets, whether there is any intervening market or whether it is just a straight country haul, are lower than the so-called scale shown in exhibit 11. These rates I have shown here on exhibit 55 are typical rates. I have a chart here, if you would like to see it, of several hundred rates which show that these levels I have indicated on exhibit 55 are fairly representative.

Q. Is it not generally a fact that when you talk about Western Trunk Line Territory, that the through charges would average about 90 per cent of what you term as that nebulous scale?

A. My computation shows less than 90 per cent, as I testified on direct.

By Mr. Brown:

Q. From where to where?

A. From and to the points shown on exhibit 55, in the upper half of the exhibit.

By Mr. Cole:

Q. Now, I understand that your theory back of the construction of these bases in your exhibits throughout would [fol. 1585] arrive one reasonable grain level of rate, is that it?

A. No; I am merely trying to test the reasonableness of the rates that are involved in this proceeding.

Q. Mr. Childe, your resulting level, would you call that a local level?

[fol. 1586] A. I would not characterize it as local or proportional. I would merely characterize it as a fair average revenue for the carriers in the Eastern District on grain, if we assume that grain should not pay any more than the average all-revenue freight.

Q. If your level of rate were to be put in as a local basis, would you then expect to see resulting a different proportional basis, somewhat lower than that applicable on various traffic moving into or from other territories?

A. Well, of course, I am not assuming that the scale which appears in my exhibit 57 is going to be applied generally throughout the Eastern District. Are you asking me now to assume it should be?

Q. Yes, I said assume that your scale that you proposed in your——

A. I did not propose a scale, understand; I am merely using that as a yardstick for testing the reasonableness of the rates that are involved in this proceeding.

Q. Well, now, let us suppose that the rate level that is shown on your exhibit No. 57 were made applicable east of Chicago on local traffic; would you then feel that it would be necessary or advisable for the carriers to make effective

certain other proportional rates east of Chicago, lower than this scale?

A. Why, that is possible; they might put in transit arrangements; they might do a lot of things.

[fol. 1587] Q. From your experience in the grain business, would you say that it would be absolutely necessary that there be certain other proportionals put in, which would vary from this local scale, if this were the local scale?

A. Necessary from the standpoint of the railroads?

Q. Necessary from the standpoint of transportation of grain?

A. No, I would not go that far.

Q. You do not believe that; then you would differ violently with the conclusions made by the Commission, in as far as the Grain Case, the Southwestern Grain case is converned, when they felt that it was absolutely necessary for the continued existence of the grain traffic that there be——

A. Are you quoting the Commission?

Q. Yes; I am quoting the Southwestern Grain case, 225 I.C.C.; the page number I have forgotten.

A. I would have to see the citation before I could answer that question. I doubt whether the Commission has said that it is absolutely necessary to have proportional rates; but if it said so, I would say the Commission is correct.

Q. In which event you would change your scale. You misunderstood me, that it was—the Commission's finding was such that it was absolutely necessary to have two proportionals east of Chicago, one Ex-Trans-Mississippi and one——

A. Oh, I see; that is different from what I understood your question to be.

[fol. 1588] Q. That is what I thought. That is all I have.

By Mr. Day:

Q. You testified that the rates in your exhibit 52 which are local rates from Morris to Eastern destinations, were higher than the rates shown on exhibit 51 from Chicago, Peoria, and St. Louis to eastern destinations?

A. I said they were higher in the yield per ton mile and per car mile.

Q. Well, you were comparing not the local with local, but the locals on exhibits 52 with the proportionals on exhibit 51; is that it?

A. Compare them with either one, and the statement would be true.

Q. All right; let us look into that a minute; on exhibit 52 you show that the earnings per car mile are 30.6 cents Morris to Boston?

A. Yes.

Q. On exhibit 51 you show the earnings to Chicago from Boston 31 cents?

A. Yes.

Q. So the earnings in exhibit 51 are higher in that instance?

A. Oh, not considering the difference—you mean that the figure 30.6 is lower than the figure 31; I will grant you that.

Q. Isn't the same true as to the rates shown to the other eastern points of Baltimore, Philadelphia, and New York?

[fol. 1589] A. Well, let us see; Morris to New York, car mile 32.5; Chicago to New York, local rate, car mile 31.9. There you see the figure 32.5 is the higher. Philadelphia—New York, the earnings are higher.

Q. Higher from Chicago?

A. No;—Philadelphia, that is true; Baltimore, it is not. Baltimore, you see, from Chicago is 34.1; from Morris, 36.2, yes. The figures speak for themselves, Mr. Day.

Q. And the movement under the rates shown in exhibit 51 would be—those points are reached by single line, are they not, from Chicago?

A. Well, let us see; they could be, yes. That is not always true.

Q. Every one of them on exhibit 51, for instance, except Boston, could be reached by the Pennsylvania direct, could they not?

A. I say they could be, yes.

Q. And every one except Baltimore and Philadelphia could be reached by the New York Central direct?

A. But bear this in mind: the eastern railroads do not and never have had any movement, and they do not have and they never have had any movement of grain from Chicago to these eastern destinations on local rates. Those local rates are purely fictitious, as far as moving any traffic is concerned.

Q. Aren't you taking a lot for granted?

A. I make the statement.

[fol. 1590] Q. Don't you know that the Chicago rate group includes a large grain-producing area?

A. Did I mention any group—I said Chicago. From Chicago the local rate is a fictitious rate.

Q. From the city of Chicago?

A. Right.

Q. All right; but so far as the points intermediate to Chicago, or points south of Chicago, or southwest of Chicago are concerned, there are a large number that take the Chicago rate and also produce a large amount of grain.

A. I would not go that far, no; there are some points in the Chicago rate group-so-called that have these local rates to the destinations shown on exhibit 51. How much traffic moves on those rates, I couldn't tell you.

Q. What do you mean by the Montfort mileage tables No. 3, shown on your exhibit 52?

A. Oh, that is a compilation of mileages which are published by a Mr. Montfort in Chicago.

Q. Is it on file with the Commission?

A. No; the only reason I ——

Q. Who is Mr. Montfort; tell us something about him.

A. He is the publisher of the mileage table.

Q. You don't know where he gets his mileage?

A. Yes, I know in a general way he compiles them from the railroad mileage tables.

[fol. 1591] Q. How do you know that?

A. Well, I have got the information directly and indirectly; I have checked a good many of them.

Q. By directly you mean you got it from him; he told you that he got it?

A. Well, yes; I got it by correspondence. I don't know whether I have had any personal conversations about it, or not.

Q. You wrote to him, though; and he told you that *he* is how he got it in part?

A. Oh, yes; it is easy to check it. Please bear this in mind: the only place where the Montfort mileage table was used was in order to get the rates from Joliet, Illinois, which did not happen to be shown on the railroad exhibits.

Q. Why didn't you show these Montfort tables from other points in your exhibits?

A. Well, the Montfort table, of course, and the railroad mileage table would be the best thing.

Q. What would Mr. Montfort have shown, for instance, if he was indicating the mileage from Churchill, Illinois, to Chicago, indicated on your exhibit 53?

A. In order to answer you I would have to look at the table; but I can say this from my general knowledge; that Mr. Montfort's mileage, if he showed one from Churchill to Chicago, would be the same as the railroad mileage table.

Q. He would show the short line mileage?

[fol. 1592] A. Oh, yes; he would show the short line.

Q. But you do not, do you?

A. Well, in what case?

Q. I am still talking about Churchill, for an example; on your exhibit 53.

A. The Churchill mileage, that I took from Mr. Sperry's exhibit; I explained that.

Q. And to get into Chicago over the New York Central from Churchill you would have to use the Kankakee Line to Schneider, Indiana; and then go north, wouldn't you?

A. I don't know; I merely took Mr. Sperry's mileages on exhibit 53, as I explained on my direct.

Q. You don't know what the Northwestern's direct mileage from Churchill would be?

A. No. I think I can answer you generally about exhibit 53 that those are the mileages via the routes shown on the exhibit. There may be a shorter mileage via some other route. In that event, of course, the per ton mile and per car mile figures on exhibit 53 would be correspondingly higher than what I have shown. What I have shown here would be the lowest possible ton mile and car mile earnings, if I have used the longer rather than the shorter route.

Q. You would not show the North Western mileage if Mr. Sperry had indicated it on his exhibit, from Churchill?

A. No; I took for each railroad as shown on the exhibit the [fol. 1593] shortest mileage and the longest mileage that Mr. Sperry had shown on his exhibit, so as to have a thoroughly representative showing of the stations Mr. Sperry used.

Q. Well, you only show Churchill once on the exhibit 53; by that you mean that he didn't show it but once on his exhibit?

A. He only showed it once, as the station on the New York Central, the farther distance from Chicago.

Q. But if he showed it on the North Western, you ignored that?

A. Oh, yes; I did not undertake to go any further than I have explained.

Q. The same way from Mendota; you used these various circuitous branch lines, instead of the Burlington direct into Chicago?

A. I used whatever he used.

Q. He showed the Burlington mileage too, didn't he?

A. Mendota is shown as the station on the Illinois Central because it is the point shown in Mr. Sperry's exhibit farthest distance from Chicago on the Illinois Central which takes a non-transit rate lower than the interstate or specific basis. Now, Mendota might be and no doubt is a station on the Burlington a shorter distance from Chicago. I am not trying to show short line mileages, but the range of distances on each railroad within which these rates apply. Now, there might not be another railroad serving a station on the Illinois Central this side of Mendota; and in that event the Mendota rate and mileage would approximately [fol. 1594] represent the lowest earnings of the Illinois Central.

Q. Well, the only point you show on the Illinois Central, outside of Mendota, was this town in the western suburbs of Chicago, Hillside, on the western line of the Illinois Central, 18 miles.

A. Hillside was taken because that is the station in Mr. Sperry's exhibit on the Illinois Central which is the closest to Chicago.

Q. You did not show any points on the Illinois Central's main north and south line out of Chicago?

A. That is obvious.

Q. And when you came to Minooka you took the Elgin, Joliet & Eastern, the so-called outer Belt route, instead of using the main line of the Rock Island Railroad; isn't that a fact?

A. I took Minooka on the Elgin, Joliet & Eastern again for the reason that it represents the longest haul over the Elgin, Joliet and Eastern for which Non-transit rates apply.

Q. You know the Elgin, Joliet & Eastern coming from Minooka encircles the Chicago area and runs over into Indiana?

A. Yes.

Q. Minooka is on the Illinois River, is it not, just a few miles outside of Joliet?

A. I don't know.

Q. How did you arrive at this 19 miles from Griffith, [fol. 1595] Indiana, to Joliet, via the Elgin, Joliet & Eastern; can you tell us what lines of the Elgin, Joliet & Eastern make a mileage of 19 miles from Griffith, Indiana, into Chicago?

A. That is Mr. Sperry's mileage; that is all I know about it.

Q. Now, Willow Springs, that you show twice, once on the Alton and once on the Santa Fe, is also a point on the Illinois River, or the Illinois and Michigan Canal, is it not?

A. I don't know.

Q. You don't know about that?

A. No.

Q. You don't know that Minooka is either?

A. I believe I so stated.

Q. And you do not know that Worth is on the Wabash?

A. That is correct.

Q. It is on the Calumet Sag Channel; you don't know that?

A. I know where very few of these stations are, exactly.

Q. You know where very few of them are? Is there any reason, in your opinion, why the rates from Willow Springs to the east should be any higher than by barge and rail from Morris to the east?

A. I have not undertaken to analyze the rate from Willow Springs to the east, other than to say that if Willow Springs is located on a railroad and not on a waterway that that constitutes the reason for a higher level of rates by rail as compared with water and rail, from the point served by water.

[fol. 1596] Q. Supposing it is on both the canal and the rail?

A. All right.

Q. 18 miles out of Chicago.

A. What is your question?

Q. Should the rail rate be higher than the barge and rail rate from Willow Springs to the east?

A. It depends on what the barge lines are willing to handle it for from Willow Springs to Chicago.

Q. In other words you think that the rate by barge ought to be lower?

A. If the barge line can profitably handle it on a lower basis, yes.

Q. Isn't it true that of these stations on exhibit 53 there are a number of others contiguous to the Illinois and Michigan Canal?

A. I don't know.

Q. Will you look at your exhibit 57; I do not understand the statement made there in numbered paragraph 3, that the average haul for Class 1 railroads in the United States in 1937 was 197.6 miles, and for all railroads as one system in 1937, 337.4 miles; can you give us reference to the Commission's statement where that 337.4 will be found and explained?

A. I can if you will give me a copy of the Commission's statistical extracts for 1937; I do not happen to have it with me.

[fol. 1597] By Exam. Taylor:

Q. But you did find it in there?

A. Oh, yes; it is in there.

By Mr. Day:

Q. Can you tell us what mileage as one system means?

A. Yes; it takes the total ton miles and the total tons, and divides the ton miles by the tons and gets an average haul.

Q. On exhibit 51, page 2, you omitted per car mile earnings for the Great Lakes and the Central Eastern region; do you have a figure for the Central Eastern region?

A. They publish the ton mile, but not the car mile; that is to say, they publish the basic figures.

Q. And you could have got it in the same way you obtained it for the eastern district as a whole?

A. No; I only give you the ton miles because the Commission does not give the car miles by regions.

Q. In the Eastern District, did you include the Pocahontas region?

A. No.

Mr. Day: That is all I have.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Childe, you are called here as a witness by the Mississippi Valley Association, intervener?

A. Yes.

Q. Did you in your direct examination state what the purpose of that organization is?

[fol. 1598] A. No; Colonel Randolph did that the first hearing.

Q. Will you tell me what it is, just briefly; I have forgotten.

A. It is an association in the Mississippi Valley states; that is, some 20 odd states in the basin and its tributary. The purpose is to promote the commerce and economic welfare in that region.

Q. There are no partial states in there, are there?

A. Well, there is no exact territorial limitation; if a man wants to come in from a point outside of the region, he would have to apply for a membership.

Q. Illinois?

A. Illinois is considered within the region, yes.

Q. Iowa?

A. Iowa; yes. All the states Ohio to the Rocky Mountains and the Canadian border to the north.

Q. Colorado?

A. Yes, Colorado and Oklahoma.

Q. Texas?

A. The same from Texas.

Q. As I understand it, then, your activities are devoted to the economic welfare of the people generally in that wide expanse of territory?

A. Yes, sir.

Q. And it is in furtherance of that purpose that you appear here as a witness in behalf of the Mississippi Valley [fol. 1599] Association?

A. Yes, sir.

Q. Is it your position that the growers of grain who are so located that the Illinois waterway is not available to them are profiting by these so-called lower costs on the waterway?

A. Yes.

Q. Did you say yes?

A. Yes.

Q. Have you analyzed that—do you get into the economics at all?

A. Yes.

Q. Have you analyzed that from an economic standpoint?

A. I think so.

Q. You think it benefits the farmer who is so located that the grain that he raises is not available——

A. Yes.

Q. Would you explain that, please.

A. There are a good many ways in which he is benefited.

Q. Give me the best ones.

A. I would have to give you quite a number, and let you choose your own. The grain which moves by water out of the Illinois Valley gets the farmer a higher price who ships it from the Illinois River Valley by water. That grain may go to Chicago to go to New Orleans, or the Pacific Coast, or somewhere else. But that grain tends to find broader markets at higher prices than if the waterway were not [fol. 1600] there. That means that the remaining grain that cannot use the waterway, must be shipped by rail, has just that much less grain to compete against in the area that is supplied by rail. Consequently the farmer who ships by rail would be able to get a higher price. Not only that; but as Mr. Burwell showed in his testimony, sometimes people who ship by rail have to come to the Chicago markets—Mr. Burwell complained he could not get it in the country. Why Mr. Burwell could not buy—when he could buy at the low prices in Illinois he goes to Chicago and becomes a bidder on the Chicago Board of Trade; and that additional bidding tends to raise the Chicago price to the man who ships to Chicago by rail as well as by water.

The farmers also benefit in that they opened a way which tends to increase the general prosperity in the territory; that means more people, more jobs, more income, and therefore better conditions for the farmers generally.

Q. I just want to know about this farmer who is not contiguous to the waterway.

A. That is what I am talking about.

Q. Isn't everything that you said predicated on the assumption that the man who ships by water must get to one consuming territory, and the man who ships by rail must go to another consuming territory?

A. It is a fact the man who ships by water goes to both. He goes to a wider area, and gets a better price.

[fol. 1601] Q. When the man who ships by rail has to go to the same consuming territory to which the man who ships by water must go, tell us how that man by rail is benefited by water lower transportation costs, so-called?

A. Well, I already explained one way he was benefited. If we assume that the man who ships by water goes to Chicago and the man who ships by rail goes to Chicago, the buyers remaining the same, the competition remains the same.

Q. I said consuming territory, not Chicago.

A. Well, you have to go to a market in order to talk about prices.

Q. No, I am talking about consuming territory in Central Freight Association.

A. Take a point; maybe I will follow you.

Q. Consumers down at Cleveland, Pittsburgh, Philadelphia.

A. All right; the consumer at Cleveland, Pittsburgh, or Philadelphia now has a choice of buying his grain and shipping it via lake or all-rail, or barge and rail, or truck. It doesn't matter to him how the stuff comes to him.

Q. I thought you were going to be fair with me; I will talk about Cincinnati: Let us talk about Illinois grain.

A. I will take Cincinnati, if you wish.

Q. Illinois grain.

A. Does he have to buy it from Illinois?

Q. Well, we are talking about two sets of farmers, those [fol. 1602] that are contiguous to the Illinois Waterway and those who are not?

A. My impression is that the man in Cincinnati can buy all-rail cheaper than he can get barge and rail. He would be out of this picture. The barge does not enter into his picture very decidedly, if at all, from Illinois. And this grain is moving all-water down the Illinois River, and up the Mississippi, and up the Ohio.

Q. What happens to the farmer who is not contiguous to the waterway and attempting to sell grain in competition with a farmer who is on the waterway, in a consuming territory which they both try to sell in?

A. That is what I started to talk about when I mentioned Chicago; that is a pretty heavy consuming point. Let us assume that the Chicago consumers are taking the grain that comes by water and by rail from Illinois: The price that they pay is not dependent on the form of transportation. I mean the price they pay at Chicago is not dependent on the form of transportation that is used.

Q. Has it anything to do with it?

A. As a practical thing, I would say generally no.

Q. You have got that hedged all right.

A. I am trying to be as accurate as possible. Because, let us take Morris, Illinois to Chicago, for example, and assume that is all moved by rail. The price at Chicago would be just the same, in my opinion, on any given day [fol. 1603] as if part of it moved by rail and part by water. The way it moves into Chicago is not what fixes the price; and therefore, the form of transportation is not going to alter the Chicago price.

Q. How about the point of origin price?—Assume that we may have 100 bushels of grain a piece about 60 miles outside of Chicago; and you get your grain to Chicago for 10 cents, and I have to pay 15 to get mine up there; how much less will I get for my grain than you get for yours?

A. 5 cents; but my rate is raised from the figure of 5 cents to 10 cents, or whatever you used; that would not give the rail shipper any more money. It would merely deprive the water shipper of the higher price.

Q. Isn't the farmer in Illinois who is not contiguous to the waterway exactly in the situation of the man who has the 15 cent rate to pay as compared with the other man who pays only 10 cents, by analogy to the man on the water?

A. The farmer who has the 15 cent rate is not as well off as the fellow who has the 10 cent rate.

Q. Is he in the same position as the gentleman to whom I refer?

A. Doesn't that answer your question?

Q. Well, you said you were going to get 5 cents more than I would, in the illustration that we had; now, won't the farmer in Illinois get 5 cents less, who is not contiguous to the waterway,—get 5 cents less than the man who is?

A. If you assume two men in Illinois, both paying the [fol. 1604] 15 cent rate into Chicago; and if you assume that one of those men gets his rate reduced to 10 cents; that man gets the benefit of 5 cents, but the man who paid the 15 cent rate is in the same situation as he was before.

Q. Have you answered my question?

A. I think so.

Q. Could you give me a yes or no answer to it?

A. I do not understand it is susceptible of yes or no.

Q. I said, is he in the same position?

A. The man who pays the rail rate is no different than he was before; doesn't that answer it?

Q. No.

Mr. Brown: Before what?

A. Before the man on the water got the rate reduction.

By Mr. Enoch:

Q. You realize you have not answered the question, don't you, Mr. Childe?

A. No, I do not; I tried to answer it.

Q. Your association is not opposed to the interests of these farmers who are not contiguous to the waterway, is it?

A. Certainly not.

Q. Wouldn't you be willing to make as much of an effort in their behalf, if occasion presented itself, as you appear to be making on behalf of these farmers here in Illinois that are contiguous to the waterway?

A. We try to represent the interests of everybody.

[fol. 1605] Q. The answer is yes, isn't it?

A. The answer is that we have no idea whatever of hurting the farmer who ships by rail, who is not on the waterway.

Q. Or who ships by any other means of transportation?

A. No.

Q. Aren't you willing to help him to the same extent you are willing to help a man that ships by water?

A. Certainly; but your point——

Q. I have not intended to confine it to rail shipping.

A. You gentlemen seem to think that the man who ships by railroad is hurt because somebody on a waterway gets a lower rate; I do not agree with that.

Q. What is the position of your association as to these farmers who sells to Mr. Bacon, a man who ships into Chicago by truck;—now, Mr. Bacon, complained here, I think, he had to pay if he moved outbound by rail a local rate on corn received by him by truck; what is the position of the Mississippi Valley Association on that?

A. We would be glad to see Mr. Bacon's trucked corn get a lower rate east. May I explain what I have in mind: The truck corn that comes into Chicago does not move out on local rates at all; it can't. It moves out now by water, or

is consumed locally. Now, if the railroads figure a rate which would permit that grain to move out of Chicago by rail, we would be glad to see it done.

[fol. 1606] Q. Do you think they should?

A. I think it would be in their interests to do so; I think that they should, yes.

Q. Should it be the same rate as you are asking the railroads to apply on ex-river grain?

A. Not necessarily; I would have to go into the question of truck rates more thoroughly, before I can answer you def-nitely. But I can answer this much; I think the so-called present proportional rates would be none too low for transporting grain that comes into Chicago by truck, or any form of transportation.

Q. Would be too low?

A. None too low.

Q. Just what would you go into, to find out what the measure of the proportional rate should be on an inbound truck movement?

A. Well, in the case of Chicago I would bear this in mind: That the so-called proportionals are in reality the highest rates the railroads get, or can get for hauling grain out of Chicago today. If they charge any higher than that they won't get the business. Therefore, if they want any business at all to move out of Chicago by rail, that comes in by truck, they had better apply those maximum rates; they cannot get any more. Those rates would pay them a very handsome profit; therefore I say you should apply the rates no higher than that.

Q. That would be the scope of your investigation, if you [fol. 1607] wanted to find out what level of the proportional rates to apply on inbound truck grain should be?

A. That is as far as I can go with you; right.

Q. Do you see any distinction between the grain that comes in by private truck and the grain that comes in by private barge, for the same distance?

A. You mean so far as hauling out of Chicago is concerned?

Q. Yes.

A. I think they are similar.

Q. Similar?

A. Yes.

Q. In all respects, are they not?

A. I would say outside of the fact one comes in in the form of one transportation and one another, it is the same grain.

Q. You were never in the grain business, were you, Mr. Childe?

A. No.

Q. And has not most of your experience in connection with grain rates been in cases where some waterway transportation has been involved?

A. Oh, I have represented grain shippers in other cases, involving rail rates.

Q. I said, most of it has been.

A. Well, I will have to count them up, to see; I have been in a good many of both kinds.

Q. Do you know what a true proportional rate is?

[fol. 1608] A. I think so.

Q. And what its purpose is?

A. Yes.

Q. Would you mind stating it?

A. Well, it has a good many purposes; the reshipping or proportional rates, if you want to call them such, out of Chicago are the same thing.

Q. I said true proportional rates?

A. Do you want me to assume that the rates out of Chicago are not true proportional?—I think a proportional rate, if you want my answer, is any rate which applies on traffic which has had prior transportation into the shipping point.

Q. Of any kind?

A. Of any kind.

Q. Did you ever know of a shipment that moved from any local point that did not have some kind and some degree of prior transportation?

A. Well, if you want to take by wagon or truck into an elevator, I would say that was true; yes.

Q. I am talking about moving it from, or a haul——

A. What I am talking about is transportation from one point other than a shipping point, some other station, if you please. The theory of the proportional rate is that if traffic really comes from some other station, that the rate outbound from the first station is in reality a part of a through haul.

[fol. 1609] Q. Through rate?

A. No, through transportation.

Q. Through rate too; would you say that?

A. Part of a through rate—I wouldn't go that far, no; part of through transportation. The Commission generally recognized the fact if traffic has had transportation from some other station and then goes on beyond, if the stopping point is simply a resting place, they might say that constitutes transportation from the origin to the final destination, then the movement from the stopping points to destination partakes of a part of through transportation and may reasonably be charged a lower rate on that account. That is the theory.

Q. But it is not a part of a through rate?

A. Not necessarily. Take for example—

Q. Would you say that the Commission had described it as such at least one hundred times in the last ten years?

A. Part of a through rate?

Q. Yes, or nothing at all.

A. They might have; but they have also described it as part of a through transportation.

Q. Now, on these rates which you suggest for application east of Chicago, you have not taken any position that the rates of corn should be different from the rates on wheat, have you?

A. East of Chicago?

Q. Yes.

[fol. 1610] A. No.

Q. And that the rates on the products should be any different than the rates on whole grain?

A. No; I am merely testifying the rates are in effect now.

Q. You are not testifying though in so far as they might properly apply on all commodities moving under the rates?

A. That is it; but so far as they might apply on corn which comes into Chicago by barge.

Q. Is it your position that the rate outbound from Chicago on corn inbound by barge should be on a different level from the rate outbound on some other grain, or products of grain?

A. My whole point is that you are now charging a certain rate which is reasonable in the sense that it pays you a very liberal return. You are proposing to increase that rate to a point that will be prohibitively high. My point is that the proposed rate is unreasonable; that is all I am——

Q. Aren't you assuming that it moves corn?

A. I am assuming that it moves grain.

Q. What is the average loading on grain, or the average loading on the products?

A. It depends on what you pick; do you want to include toasted corn flakes, or breakfast foods, or leave them out?

Q. You mean take them in the morning?

A. I mean include them in the computation.

Q. I mean include them in the transportation?

[fol. 1611] Exam Taylor: Recess for five minutes.

(A short recess was taken.)

Exam Taylor: I understand, Mr. Enoch, you have finished.

Mr. Enoch: That is right.

Exam Taylor: Mr. Bradford.

By Mr. Bradford:

Q. Mr. Childe, in answer to a question that Mr. Enoch asked, I believe you said your definition of a proportional rate was one that moved grain from a point at which the grain had come to rest, and where it had a prior transportation from some other point?

A. Yes; I did not limit it to grain, but speaking generally.

Q. Bearing in mind that the truck grain ordinarily comes from the farm to the market; is that correct?

A. That is not entirely true; there is quite a lot of truck grain that comes from towns, as well as farms.

Q. Any grain that comes from the farm to a market, you would take that grain out of there?

A. No, I would not go that far; if the grain moved a hundred miles, from a farm, I don't see why that should be any different from the grain that moves from a town.

Q. That is what I am trying to get at; you limited your proposition to grain, or a commodity that had movement from some other point?

A. From some other station.

[fol. 1612] Q. But now you would include grain that moved from the farm one hundred miles away?

A. I can see that a proportional rate might——

Q. Where would you set the limit, where the proportional rate would not apply?

A. I would probably take the grain within a local area that could not move from some other station, and exclude that; and leave it open for everything else that could move via some other form of transportation, or some other station.

Q. Then you have less consideration for the farmer that is nearer the market that might haul his stuff by truck?

A. No, I would like to see him get a fair rate, too.

Q. You would not apply that proportional rate to his business?

A. No; but I would like to see him get a fair rate, nevertheless.

Q. Mr. Enoch mentioned the town of Cincinnati, a dealer at Cincinnati drawing grain from a point in Illinois by rail as against grain moving from a point adjacent to this waterway; and I believe you answered on the proposition that the grain would be consumed in Cincinnati?

A. Not necessarily.

Q. What would be your answer on grain that moved through Cincinnati to a station like Baltimore, competing with grain that must originate on the waterway, and——

A. That would be such a circuitous haul to Baltimore.

Q. Do you think it is a circuitous haul from the south [fol. 1613] central part of Illinois to Cincinnati?

A. No; but the Illinois waterway does not get down there.

Q. Won't you concede that grain must compete with grain that is marketed——

A. I would say that Cincinnati would have to compete for it, rather than that grain has to compete with Cincinnati. The man who raises corn in southern Illinois will sell his corn wherever he can get the best price; that may be Cincinnati or San Francisco.

Q. But if the rate from southern Illinois to Baltimore through Cincinnati is higher than the rate from southern Illinois through Chicago, or higher than the rate on grain produced on the waterway, wouldn't the price paid at Cincinnati or any place between southern Illinois and Baltimore, be less than the price on the corn that was produced in southern Illinois on the waterway?

A. No.

Q. Why wouldn't it?

A. The man at Cincinnati or Baltimore pays a price on grain, regardless of the form of transportation by which that grain is transported to destination.

Q. Do you know that to be true?

A. That is, generally.

Q. Did you ever market grain?

A. I have had quite a lot of experience, as you have, in [fol. 1614] observation.

Q. Did you ever sell a car of grain?

A. I never sold a car of grain in my life.

Q. You don't know the answer then—now, I believe you mentioned one of the places where the farmer benefited, one of the means that the barge line benefited the farmer was to the Pacific Coast; is that correct?

A. Yes.

Q. Are you familiar with the old adjustment of freight rates from Nebraska and South Dakota to the Pacific Coast?

A. Yes.

Q. Do you know when the barge line down the Mississippi River and the movement through the Panama Canal displaced the corn from South Dakota and Nebraska going to the Pacific Coast?

A. Yes.

Q. Do you know if on the Omaha Grain Exchange, and the Sioux City Grain Exchange, prior to that time there was a premium paid for that billing?

A. Premium over that which they shipped east?

Q. Yes.

A. Yes.

Q. Do you know if that premium continued after the barge line started operation and took the business away from the farmer in Nebraska and South Dakota?

A. There was a temporary disturbance which resulted, [fol. 1615] as you know, in a reduced rail rate from Nebraska and South Dakota to the Pacific Coast.

Q. Would you say that that reduced rail rate brought back the same volume of business from Nebraska and South Dakota to the Pacific Coast as was formerly in existence?

A. Well, this happened when corn west of the Missouri River was getting scarcer and scarcer on account of the drought. So, when you are talking about volume,——

Q. When did it happen?

A. When did it happen, when the barge line movement displaced Nebraska and South Dakota corn?—As I recall, it was 1935 and 1936.

Q. And in 1935, won't you agree that South Dakota did have a corn crop?

A. No, I won't.

Q. Well, the figures will show that; but nevertheless, was there a premium paid from that time on until the present time on what is known as Group F billing at Missouri River markets?

A. There have been premiums paid in certain instances.

Q. To the Pacific Coast?

A. I can't answer you any more definitely than that; I don't keep all these practices, all these prices in my head.

Q. When that Nebraska and South Dakota farmer lost that Pacific Coast market, did that result in any benefit to him,—bearing in mind his premiums were taken off?

[fol. 1616] A. No benefit to the Nebraska farmer, no.

Q. Nor South Dakota?

A. Nor South Dakota.

Q. Nor any farmer in Group F territory; that is, the Transcontinental Group F territory?—You will agree with me on that?

A. But on the other hand, the farmer in Illinois got a higher price; so did the farmer in Iowa.

Q. But you reduced the farmer's price in Nebraska and South Dakota, to hand it to the farmer in Illinois along the Mississippi River?

A. No.

Q. Well, if he got a premium for it before,——

A. As a matter of fact, if you want to take all the farmers that effect was higher prices to the farmer.

Q. What farmer?

A. The farmer who used the waterway.

Q. But resulted in lower prices to the farmer that did not?

A. No; that is where you did not—the reduction did not offset the increase.

Q. The reduction to the farmer out in South Dakota and Nebraska was pretty substantial?

A. I don't think so.

Q. Do you know how much it was?

A. No; nor you don't, either.

[fol. 1617] Q. If I will tell you that day in and day out there was three and four cents a bushel premiums on Group F billing, based on my knowledge of fourteen years' experience, will you accept that statement?

A. Yes; but I would not accept that conclusion.

Q. I am just asking you to accept my statement that there was three or four cents premium paid on billing to the Pacific Coast?

A. I will accept that.

Q. If that premium was removed, didn't that farmer get three or four cents less for his corn?

A. I would not agree to that.

Q. I think you said something about the Chicago rate group, and you referred to it as a small group;——

A. Let me correct you right there; I didn't say anything about the size of it.

Q. I think you said small group; I wrote it down. Anyway, would you consider a territory that runs to Joliet, Aurora, almost to Lafayette, Indiana, and over to Valparaiso, Indiana, as a small origin group,—and to Milwaukee?

A. No, I would not call that very small.

Q. And therefore, this 34½ cent local rate from Chicago does move a substantial volume of grain from territory other than that immediately adjacent to Chicago?

A. I do not think that follows.

[fol. 1618] Q. You do not think so?

A. No; I haven't any information as to the volume on the 34½ cent rate to the east.

Q. I will put the question this way: If a man located at Tefft, Indiana, had a 34½ cent rate and wants to ship grain to New York, what rate would he pay?

A. The local rate.

Q. 34½ cents; you will take my word?

A. If he ships by rail; but I question whether he does in any substantial volume.

Q. Can you tell me how he will ship any other way than rail, if he is not on the waterway?

A. He can ship somewhere else; you are talking about movement to New York.

Q. Any other place, wouldn't he pay his local rate?

A. If he shipped to New York by rail.

Q. If he shipped any place, would he pay his local rate?

A. He would pay it to that point; he might be moving it by truck to Chicago, for all I know.

Q. If he moved it by truck, under your theory, would he get the reshipping rate?

A. He would ship by lake or sell it locally.

Q. You would take away the privilege of any market east of him buying from him, because he could not compete with [fol. 1619] the rates by water to Chicago; is that it?

A. No.

Q. Now, I would like to ask you something about your exhibit No. 52: Are there at this time any through one factor rates on grain from Morris, Illinois, to points in Central Freight Association territory?

A. Not that I know of.

Q. And in arriving at the rates shown,——

A. There may be to Battle Creek.

Q. I will admit that; but generally speaking, there is no through one-factor rate? What factor up to Chicago did you use in arriving at your through rate?

A. 9½ cents, I believe it is; yes, that is right, 9½ cents per hundred pounds.

Q. Now, will you refer to your exhibit No. 55; what is the purpose of showing the proportional rates on that exhibit? I do not know whether I get you correctly or not.

A. The purpose is for comparative purposes, to show that a proportional rate was subscribed by the Commission substantially lower than local rates in the same territory.

Q. Did you use the proportional rates shown on this page in arriving at what you considered a reasonable rate for the movement of grain in Central Freight Association territory?

A. No.

Q. Is that one of the factors?

[fol. 1620] A. No; I did not use it in computing my reasonable grain rates in the east.

Q. I believe you said that you participated in the Western Grain case?

A. Yes, I was in some angles of it.

Q. And I think you read the order in that case?

A. Oh, yes.

Q. Now, in arriving at proportional rates from the Missouri River east the Commission first set through rates

from Kansas to Chicago, as an example, and broke them back to make a rate break at Kansas City?

A. Yes.

Q. And didn't they——

A. They did that in some instances.

Q. You said yes, which is enough.

A. I want to qualify it a little.

Q. And didn't they use 15 cents as that proportional rate that time?

A. Yes.

Q. And didn't they then apply that same proportional rate from St. Joseph, Omaha and Sioux City to Chicago?

A. Well, they made a blanket rate.

Q. It was not blanket; it was just from those points, and it only applied——

A. Well, you want me to take Kansas City first as the [fol. 1621] key; I don't think it is a key any more than Omaha or Sioux City were key points.

Q. You said you read the report?

A. Yes, I did; and I think I know enough about it so I can answer your question.

Q. Isn't every one of those proportional rates that you refer to in exhibit No. 5 only applicable on grain that has paid a certain minimum rate into that market?

A. A certain minimum?

Q. Yes, sir: by rail.

A. I believe that it has to be a minimum of the 5-mile rate, or something like that.

Q. Would you take my word for it that at the time the rates were published the minimum rate to Sioux City, Iowa, was 8½ cents per 100 pounds?

A. I presume you know what you are talking about; that sounds a little high to me.

Q. That is what it was. We will take 8½ cents for 10 miles into Sioux City, and that was the minimum rate that would apply in connection with the 15 cents proportional rate, or 16 now; and we will add that to the 16 cents, and we will arrive at a through rate of 24½ cents for a distance of 508 miles, instead of 16 cents for 498 miles; and don't you think that is a better comparison of what a local rate should be from Illinois?

[fol. 1622] A. I am not using it to compare with the local rates from Morris; I am using it to compare with the proportional rates from Chicago.

Mr. Brown: Mr. Bradford, you mentioned the rate went from 15 to 16, but failed to mention that the inbound minimum went up from 8½ to 9 cents.

Mr. Bradford: Thank you; I got another half cent.

By Mr. Bradford:

Q. Something was said about Western Trunk Line scale; in the first order in the Western Grain case, did not the Commission prescribe a specific scale?

A. Prescribe it?

Q. Yes.

A. Not as I recall it.

Q. Wasn't there a Western Trunk Line scale in the first order?

A. You mean a scale of rates which the Commission said had to be applied generally in the territory?

Q. I will make the statement; you tell me whether I am wrong: didn't in the first order the Commission in the Western Grain case carry a Western Trunk Line scale; and in the second order they said there really was no need for it, and they left it out?

A. My answer, to the best of my recollection, is no.

Q. What did they prescribe?

A. They prescribed specific rates from what they called representative or key points.

[fol. 1623] Q. They prescribed specific rates to the markets; but I am talking about the movements generally; didn't the first order in the Western Grain case carry a scale?

A. You mean between the country points?

Q. Yes.

A. I think perhaps you are right; my recollection is not very clear.

Q. Can you tell me what relation the key point rates to the market carried in that scale?

A. Lower.

Q. How much lower?

A. I couldn't tell you offhand.

Q. Don't you know that the Commission said themselves 90 to 95 per cent?

A. That is lower, isn't it?

Q. That is lower, but that was the basis of the local rates to the market.

Mr. Root: There is a lot of confusion about that now; that is the first market?

The Witness: Really, Mr. Bradford, I would rather have you tell what the facts are; I cannot depend on my memory.

Exam. Taylor: The reports will speak for themselves, in any event.

Mr. Bradford: I am just trying to find out what he knows, if anything.

[fol. 1624] The Witness: He is talking about an early decision, that was superseded. I don't see that it has any bearing.

By Mr. Bradford:

Q. You used it in your exhibits.

A. I referred to it because I thought Mr. Tannehill was using something that was not a rate scale at all. My opinion is that it had no particular bearing on this case at all.

Q. Now, you admit that 91 per cent applied as a key point.

A. I will take your word for it.

Q. And then a proportional rate applied from that market to the next market?

A. That is correct.

Q. Now, if you want to make a rate to some Central Freight Association point or other, don't you believe that would be a better way to measure it than just to take some scale like you have shown on your exhibit No. 57?

A. I think it would be fair to take the eastern and western factors, both cases, and make a comparison.

Q. Then I want to ask you something about exhibit No. 57: I take the rate that you show on the exhibit,—and I assume these are local rates as well as the proportional that you are suggesting as reasonable rates; take the rate that you show for 500 miles, what is that rate?

A. 13 cents.

Q. Now I will ask you to look at the proportional rate you show in your exhibit 55 from Sioux City, Iowa, to Chi-[fol. 1625] cago, 498 miles; what is that?

A. 16 cents.

Q. So your proposal for a reasonable rate for 500 miles is actually 3 cents less than the prescribed proportional rate from the Missouri River to Chicago; is that it?

A. It shows that is a pretty good rate.

Q. Your answer is yes?

A. The Commission said 16 cents was a reasonable maximum proportional rate from the Missouri River to Chicago. Eastern lines generally have a lower rate, however, than Western lines; therefore 13 versus 16 seemed to be comparable.

Q. And the Commission also had in mind there was prior movement, because they broke the rate back?

A. Prior movement?

Q. And in your case, the rate of 13 cents, there will not be any prior rail movement; is that correct?

A. Yes, there will be prior movement.

Q. What prior movement?

A. We are talking about a prior movement by barge from Illinois to Chicago.

Q. I am talking about your exhibit No. 57, where you set up a scale of rates, that you say or consider is reasonable rates; and I asked you if that was a local rate too, and you said it was for any movement. In answer to Mr. Enoch's question you said you didn't care what kind of [fol. 1626] movement, whether local or any kind, that was reasonable. Now, I am asking you whether you consider that 13 cents for local movement is reasonable in comparison with the 16 cents the Commission prescribed as proportional for the same distance.

A. It would be reasonable, inasmuch as it would pay the eastern railroads as much as they get on all freight.

Mr. Bradford: That is all.

By Mr. Brown:

Q. Mr. Childe, I understand, that the object or purpose of the Mississippi Valley Association is to develop the economic welfare of the communities in the Mississippi Valley; is that right?

A. Yes, sir; not only the communities, but the producers and the consumers.

Q. Well, you can broaden it just as much as you like?

A. Yes, we like to have it stated broadly. We deal with the general welfare, to the best of our ability.

Q. Has the Mississippi Valley Association advocated that the best method or chief method to bring about and develop the economic welfare of the community would be by the ap-

propriation of public moneys to improve and develop the waterways in the Mississippi Valley?

A. Well, we advocate generally the cheapest, most economical form of transportation possible within the Valley, all kinds of transportation. We think there is room for all.

Q. But have you chiefly advocated as a means to that end [fol. 1627] the appropriation by the Federal Government of public moneys for the development of the waterways themselves?

A. That has been a prominent part of our activity.

Q. It has been the most prominent part.

A. I wouldn't want to say that; but I might say perhaps we have spent a lot of time trying to get the waterways in the Mississippi Valley,——

Q. If it is not the most prominent, what has been the most prominent movement followed by your association?

A. We have dealt not only with waterways, but the general conservation of resources of the Mississippi Valley.

Q. By whom?

A. By everybody, the government and the private citizens.

Q. To what extent have private citizens contributed money for that purpose?

A. We get all our money from private citizens.

Q. Yes, that is for the carrying on of your association; but for the development——

A. You mean do we spend association money to develop the resources of the Valley?

Q. Yes.

A. Not directly; we could not go very far with our income.

Q. Well, if you do not do that, what private individuals or industrial concerns have donated money for the development of the waterways or any facility in connection with the [fol. 1628] waterways?

A. Why, speaking generally, some waterways are paid for by federal funds. That comprises most of the money: some by state funds. Some contributions have been made by landowners. All forms of contributions have been made in the Valley. The principal source, of course, is federal money.

Q. Take the landowners; where are they located with respect to the water transportation?

A. Adjacent or near the banks.

Q. They bought real estate they wanted to develop and sell to some one; is that it?

A. Well, they might have farms they wanted to protect; or they wanted to get the benefit of the waterways generally.

Q. Their interest was not any wider than their distance was from the river; isn't that a fact?

A. That is something I cannot answer directly. Everybody who contributes money to a thing generally wants to improve conditions by doing so.

Q. And this fellow who has done that has expected and has got much greater proportion, much greater appropriations from the federal government?

A. Yes; those were usually conditional from the federal government, doing certain work.

Q. Now, Mr. Childe, if the effect of the cancellation of the reshipping rates from Chicago by rail is that barge [fol. 1629] grain to a large extent, if, perhaps not altogether, must move beyond by lake to the east, would not that conform to the general policy of your association, that tansportation by water should be encouraged and permitted and developed?

A. No. Our policy is that all forms of transportation should be encouraged and promoted and developed.

Q. I am asking now if this grain is forced by the cheaper water route out of Chicago by lake, wouldn't that follow your general policy of the development of waterways?

A. I answered that it would not conform to the general policy of the association.

Q. Why, because you are self-centered in the Mississippi Valley?

A. Because we want the people of the Mississippi Valley, when they have the opportunity, to ship by all forms of transportation at the lowest possible reasonable rates.

Q. And by all means of transportation?

A. Yes, positively so. We want the railroads and the trucks and the waterways all of them to be used to the best advantage of the public.

Q. We will start from that point: did you have in mind when you answered some of Mr. Enoch's questions what Mr. McClellan of White, Illinois, said about the competition he had with trucks trucking grain to Chicago as against the movement of grain by barge to Chicago?

A. I did not have that in mind.

[fol. 1630] Q. You knew he said it, didn't you; you knew that statement was made by Mr. McClellan?

A. I don't know whether I recall the statement or not; what are you referring to?

Q. I am referring to the fact Mr. Enoch asked——

A. I know what Mr. Enoch asked me; but I don't know——

Q. If Mr. McClellan made the statement that he came in competition, in the shipment of his grain by barge-river, with Bacon's trucks,—he said Bacon's trucks were getting grain in the same territory for trucking to Chicago; if he said that, would that conform to the general policy of your association, that those two forms of transportation should have the same rate east of Chicago? You said that, didn't you?

A. I didn't say that specifically; but I will say generally that all forms of transportation should have a fair opportunity to haul what they can at reasonable rates.

Q. Now, let us take the rail rates in the Illinois Valley: did you notice in Mr. Allen's exhibit, I think it was 45, where he said the rail corn that comes in by rail to Chicago from the same Illinois Valley territory was discounted from one-half cent to two and one-half cents a bushel; what would you say about developing the railroads, if the grain that comes in by that railroad is discounted to that extent; how would you develop movement by railroads?

A. That merely reflects the rates that are available. The [fol. 1631] way to develop movement by railroad is for the railroads to make the best rate they can, just as any other form of transportation has to develop.

Q. You have seen the rates that the railroads have established or published on corn from about 375 stations, in the Illinois Valley here, the lowest rates they have had for many years, to my knowledge; now, would you say that those rates were just as much entitled to the reshipping rates east of Chicago as the barge rates or the truck rates from the same territory, originating in the same territory?

A. I think any grain that gets into Chicago by rail is entitled to reshipping rates out.

Q. Now, I am not so very particular about this, Mr. Childe; but you certainly went into back history in your exhibit 56: I want to ask you if you took these rates from Western Trunk Line tariff 332-B which you cited? Is that the current issue?

A. This particular exhibit was made by taking the rates prescribed in the Commission's report in the Western Grain case, and increasing that by the Ex Parte general increases.

Q. Which report?

A. Docket 17000, Part 7, and the latest report. You can give me the citation, can't you?

Q. Well, now, Mr. Childe, don't you know that——

A. The one in 1934, wasn't it?

Q. Don't you know that the Commission, after its first [fol. 1632] report was set aside because it was annulled by the Supreme Court, revised a great many of their proportional rates; some of them they canceled; and that the second report is the report that contains the rates that were subsequently published, and of course increased under Ex Parte 123?

A. That is right; and that is what these rates are. I think they are precisely the same as the present published rates, except there are included in here one or two rates which the Commission prescribed but which are not now published as proportional rates, for instance, Peoria-Chicago, as I recall it, is not now published as a proportional rate; but it was prescribed as a proportional rate.

Q. Well, then, your exhibit does not purport to show the present facts?

A. It shows exactly what it purports to show, what the Commission prescribed, plus the subsequently established general increases.

Q. If the Commission in a subsequent report modified it materially, and canceled the rates, for example from Peoria to Chicago, which was 3 cents, and it is now 12 cents, won't you say that was quite a modification?

A. Yes, if that was true.

Q. Isn't it true?

A. No.

Mr. Brown: Then I will ask, Mr. Examiner, that this [fol. 1633] exhibit 56 either be rejected or revised by Mr. Childe to conform to the present tariffs.

Exam. Taylor: Are you willing to do that, Mr. Childe?

The Witness: I just explained that it conforms to the present tariffs with the exception of Peoria-Chicago, which was a proportional rate prescribed but not now in effect. Peoria-St. Louis is another one.

By Mr. Brown:

Q. Take the second one, Minneapolis to Chicago; is the 12½ cent rate to——

A. It is shown here as 13 cents; that is the rate in effect today.

Q. Exhibit 56, the second item; that item right there 12½ cents Minneapolis to Chicago; is that the present rate? I am not particular about it, but it is a bum exhibit, that is all.

A. I don't know whether it is or not; I think it is.

Exam. Taylor: Well, if it is not,——

The Witness: If it is not, I would still want it in here, because that would be the Commission's prescribed rate, plus the general increase.

By Mr. Brown:

Q. Go down to the third block; to St. Louis you show from Minneapolis and Duluth 16 cents a hundred pounds; is that the present rate, and if it is, how long has it been in effect?

A. I don't know.

Mr. Brown: If he wants to use these figures,—I move [fol. 1634] we simply will have to disregard them, because they cannot be found in the tariff.

The Witness: Mr. Brown, I do not think you understand what this exhibit purports to show.

Mr. Brown: Yes, I do; and if the Commission changes its mind and think that a rate should be 19 cents, instead of 16 cents, you would say it had no right to change its mind; and you are going to use that as a basis of advocating rates somewhere else.

The Witness: No, no.

Mr. Brown: That is all.

Mr. Enoch: I understand that these rates on there are taken from the tariffs described. If they are not, there isn't any occasion for putting the tariff there, and the exhibit ought to be ignored.

The Witness: I think if it would help the record any, I could very readily supply within ten days by letter to all parties, a statement that will show just to what extent exhibit 56 varies from the present tariff rates. Generally speaking the tariff rates are the same as those prescribed, plus the Ex Parte increases. There are a few exceptions;

I think Mr. Brown has called attention to all of them. But it could very easily be checked up, if that would be helpful to the record I will do so.

Exam. Taylor: Instead of the method that you suggested [fol. 1635] here, cannot you put in a corrected exhibit for No. 56?

The Witness: What I wanted to show, Mr. Examiner, was what the Commission prescribed plus the increases; and then I can put in a supplemental item which will show wherein the present tariff rates differ from these rates. Would that take care of the situation?

Mr. Brown: As far as exhibit 56 is concerned, I want the present rates in the record, if there are going to be any rates in the record.

The Witness: That would take care of it; the differences would be very minor.

By Mr. Bradford:

Q. What, the difference between 3 and 12 cents is minor?

A. Yes; the exceptions are so few that they do not amount to anything.

Q. If there — any 3-cent rates in the country, are you perfectly willing they should be advanced to 12 cents, if they happen to be water rates? If there — any water rates 3 cents per hundred pounds today, are you perfectly willing they should go up to 12 cents, and call them infinitesimal?

A. There is not now any movement of grain on the 12-cent rate from Peoria to Chicago, that I know of; and there could not be if there was a transit balance available lower than that, as you well know.

Q. Have you put in transit balances here?

[fol. 1635a] A. No. You and I know very well that grain moving from Peoria to Chicago does not pay 12 cents; so why quibble?

Q. You don't know anything about it; and let us take your exhibit 55, since you want to argue a little bit: I want you to give the Commission the correct rates as of today in your exhibit 55, if you find any of them that are wrong; and there are. I want to go to another part of exhibit 55.

Exam. Taylor: We were talking about exhibit 56 before.

Mr. Brown: I want to go to exhibit 55 now: in the first block you show rates from Sheldon to Chicago of 25 cents; the very next figure is Storm Lake, Iowa to St. Louis, 466

miles, a greater distance, rate 24 cents; the next one, Paynesville, Minnesota to Chicago, 484 miles, rate 24.5 cents. The last two the distance is greater than from Sheldon to Chicago, and the rates are lower. On what kind of a scale would those rates be made—you have been talking a lot about scales.

A. They are not made on scale.

Q. Those rates are not?

A. Though they are the rates that the Commission prescribed, as increased to the present basis.

Q. They do not conform to a scale?

A. They do not conform to any strict mileage scale, no.

Q. I thought you were talking about Western Trunk Line scales here a moment ago?

A. Quite the opposite; they are put in here to show that [fol. 1636] the rates from the country points to the markets in the Western Trunk Line territory are lower than what Mr. Tannehill called a scale.

Q. Well, anyhow, these rates here that you have shown here,—and you only got about 6 points, and I have only taken the last three—they do not conform to any scale or any percentage of any scale?

A. As far as I know there isn't a rate in effect from country points to markets in Western Trunk Line territory that conforms to a scale.

Q. A uniform scale?

A. That is right.

Mr. Brown: All right.

Exam. Taylor: Do you wish the corrections made on exhibit 55 and 56 to show the present rates?

Mr. Brown: I don't care much about them myself, but the Commission ought to have; and that is Minneapolis to Chicago, 12½ cents; I am sure it is 13 cents.

The Witness: That may be; I am willing to accept your word for it.

Exam. Taylor: Will you supply the record with the present rates where you find that the exhibits do not show.

The Witness: Yes, I will be glad to, Mr. Examiner.

Exam. Taylor: In 10 days.

The Witness: Is that exhibit 55 and 56 only, Mr. Brown? [fol. 1637] Mr. Brown: The only ones I looked at.

Exam. Taylor: Will you make the corrections, show the tariff references?

The Witness: Well, the tariff references are already shown.

Exam. Taylor: Well, they might not be.

The Witness: If I find any of these rates are wrong, I will show the tariff in the letter.

Exam. Taylor: I do not want a letter; you can send in a letter, but accompany it with a statement.

The Witness: Will the statement be marked 55-A, or something?

Exam. Taylor: No, it will not.

The Witness: Will it have any number?

Exam. Taylor: I can't tell you; it will be numbered if it is received.

The Witness: I see; all right.

Exam. Taylor: Mr. Wheat?

By Mr. Wheat:

Q. Did I understand you, Mr. Childe, to tell Mr. Enoch that you thought it would possibly be all right to establish proportional rates from Chicago on grain which arrived by truck?

A. That is not involved in this case; but I told him I could not see any reason why there should not be.

Q. Do you think those ex-truck proportional rates should [fol. 1638] be limited to Chicago?

A. No; we were discussing general principles.

Q. You will agree then, that if proportional rates were put in from Chicago on ex-truck grain that it would comply with some regulation that you thought might be proper, they ought to be put in from Peoria and Pekin?

A. I wouldn't see any objection to applying them generally, if they went in anywhere. All this is getting so far outside the record here that you understand it amounts to speculation on my part.

Q. I realize that, Mr. Childe; but you made the statement.

A. Well, it was on cross-examination; I try to answer questions.

Q. Would you say then that because considerable corn is trucked in from Dwight to Morris, they ought to have proportional rates from there?

A. I wouldn't want to go any further into truck rates in this case, because I don't think they have any bearing.

Q. Your previous answers to Mr. Enoch's questions, and Mr. *Mr.* Brown's questions, hadn't any bearing?

A. A good many of them on cross-examination had no bearing at all, as far as I could see.

Mr. Wheat: Of course, if you won't answer questions, it is all right with me. That is all.

Mr. Enoch: Mr. Examiner, there have been a lot of state-
[fol. 1638a] ments by Mr. Childe about what the Commission did in 17000, Part 7. I would like to ask Mr. Childe when he made the statement that the rates from country stations to markets were less than the Western Trunk Line scale, you had a situation such as from Kansas to St. Louis in mind?

The Witness: Kansas to Kansas City; Kansas City to St. Louis; Kansas to Omaha; Nebraska to Omaha; and so on.

By Mr. Enoch:

Q. You have Kansas City to St. Louis in mind?

A. Among others.

Q. Have you ever checked the rates to see what on the average their level was as compared with the Western Trunk Line scale to St. Louis?

A. I think so; I made a pretty extensive check.

Q. What was the result of that check?

A. It shows generally that the rates are lower than the scale, so-called.

Q. You say you did make a check?

A. I did not check the rates with any scale, but I checked the rates to determine what the general levels were from the country points of origin to the markets. I plotted them all on a chart, and it was from that chart that I derived my knowledge of the general levels of those gathering rates.

Q. I will ask you if you checked the rates from Kansas to St. Louis, you did not find that they average higher than the Western Trunk Line scale?

[fol. 1639] A. As I told you, I did not compare them with the Western Trunk Line scale, because there wasn't any Western Trunk Lines scale in the Commission's report that I used. I used the report of 1934.

Q. You mean it was torn out?

A. There wasn't any in there; the Commission prescribed specific rates from given country points to the markets,

and I took those specific rates, took the mileages to determine the levels for several distances.

Q. But you are prepared to tell the Commission here that on the average the rates from Kansas to St. Louis are less than the Western Trunk Line scale?

A. I would not want to take Kansas to St. Louis alone, because I do not have those in mind.

Mr. Enoch: All right.

Exam. Taylor: Any further cross-examination of this witness? (No response.)

Mr. Belnap: I have a question.

Exam. Taylor: Redirect.

Redirect examination.

By Mr. Belnap:

Q. Mr. Childe, on cross-examination you stated in substance that a proportional rate is a separately established charge which the carriers hold themselves out as willing to accept for that portion of a through service, which the carriers so publish in proportional form from the proportional [fol. 1640] rate point to final destination; now, with that thought in mind, will you please tell me as to whether or not there is any transportation arising—and by that I mean any condition or circumstances surrounding the physical service performed by the carriers who perform the service, that being the only service which is rendered for the proportional rate, which justifies charging a different rate on grain which arrives at the proportional rate point either by barge line or by lake line than is charged on the same species of grain originating at the same interior origin and reaching the proportional rate point by rail?

A. Are you speaking of the rates out of Chicago?

Q. Out of Chicago?

A. Out of Chicago the proportionals are generally speaking the normal rates for transportation of grain the sense that the Eastern Lines never have gotten any higher rates than that. Therefore I do not see that there is any justification for charging a higher rate on grain that has had prior transportation into Chicago, whether the form of transportation is water or rail. Of course, the physical service performed by the Eastern railroads is precisely the same whether the grain moves into the Chicago elevator by

one form of transportation or another. The outbound rail haul is not affected by the inbound form of transportation.

Q. And if you had the same interior origin say for grain [fol. 1641] which comes in via rail, your service for which a separately established proportional is charged would be a portion of the same through service, as far as origin and destination is concerned; that is true, is it not?

A. They would both be identical in that respect also.

Mr. Cole: I have two questions I would like to ask, if you will permit me.

Exam. Taylor: Proceed.

Recross-examination.

By Mr. Cole:

Q. Mr. Childe, I understood you to say in answer to Mr. Belnap that any service beyond the proportional rate point was the same on grain via the rail line, that the proportional rate should be applied to that grain in the same amount, no matter where the grain came from, or no matter what kind of transportation it used to get into that proportional rate point; is that correct?

A. Referring to transportation out of Chicago.

Mr. Belnap: My question went from the same interior origin in both cases.

Mr. Cole: Mr. Belnap, that would be impossible; you said if the grain arrived via lake, and so the grain could not physically possibly have come from the same interior origin and moved via lake. Now, do you want——

The Witness: I do not follow you there, Mr. Cole. The grain might come from Paynesville, Minnesota, for ex- [fol. 1642] ample, by lake to Chicago,—via lake, or it might come via-all-rail.

By Mr. Cole:

Q. Is it your position, and has your testimony been dependent on this as a premise: that east of Chicago the various rail lines perform the same service on the grain, whether that grain originated and came into that point via water or rail, or truck; and that therefore that proportional rate should be the same out of Chicago?

A. Predicated on the fact that that has been your rate, that it is a compensatory, profitable rate to you. If you increase it you won't move the traffic; therefore I say you should not increase it.

Q. Do you conceive that to be an answer to my question, Mr. Childe?

A. Yes; I do not think you can be theoretical without a practical situation, and get anywhere.

Q. Do you think that grain that moves from Minneapolis to Chicago, no matter how that grain moved from Minneapolis to Chicago, now, and grain that moves from Kansas City to Chicago, both grains moving east of Chicago,—is it your contention that the proportional rate east of Chicago should be identical on those two kinds of grain for the movement east of Chicago?

A. No.

Q. What difference should there be made in the level of proportional rates east of Chicago, as between the grain that gets there from the northwest and the grain that gets [fol. 1643] there from Kansas City?

A. The difference the Commission prescribed.

Q. And why did the Commission prescribe that difference?

A. To try to satisfy competing grain markets, primarily, I think. Of course, I do not want to tell the Commission why it did a thing.

Q. Then east of Chicago, if grain originates in the immediate vicinity of Chicago, just outside of Chicago, and if grain originates in the territory just outside of Minneapolis, and if grain originates in the territory just outside of Kansas City, how many proportional rates would you have east of Chicago, considering that all of that grain now will move over the same line of railroad east of Chicago, for the same distance, the same kind of a car, and same train?

A. I wouldn't have any more than there are now.

Q. Would you have that many?

A. If I had to do it all over again, I don't know; but for the purpose of this case, I am willing to take things as they are.

Q. Now, would you have, in your understanding of the construction of a proportional rate east of Chicago,—would there be a proportional at one level for a movement from a territory within 80 or 90 miles of Chicago, into Chicago,

and a proportional rate at a somewhat lower level for that grain originated in the Northwest territory, for instance?
[fol. 1644] A. You say would I do that?

Q. Would that be your understanding of a proportional rate setup?

A. That is not my understanding of the present one, no.

Q. Is that your understanding of a proportional rate?

A. A theoretically proper one?

Q. Yes.

A. Generally, they do not vary with the distance from the point of origin.

Q. You understand, then, that a proportional rate out of Chicago would not give consideration in its level to the distance that the traffic had moved up to Chicago?

A. That is right.

Q. It would be the same level proportional rate out of Chicago?

A. That has been the practice, to disregard distance inbound.

Mr. Cole: That is all I have; thank you.

Mr. Enoch: I have two questions.

Exam. Taylor: Go ahead.

By Mr. Enoch:

Q. Mr. Childe, are you aware of the fact that there are tens of thousands of cars of grain and grain products moving from the west to the east through these gateways, Chicago, Peoria, and St. Louis?

A. Yes.

Q. And that a large portion of that comes through Chicago?

[fol. 1645] A. Yes.

Q. And that the movement is direct, without stopping?

A. I don't know about that.

Q. Well, if there is a movement direct, the rate paid for the through movement is the combination on Chicago, isn't it?

A. Whatever the through rate is, whether it is the combination or single factor rate.

Q. Well, aren't you a grain rate expert; isn't that a combination on Chicago?

A. Some of them are combinations, and some are not.

Q. How about points west of the Mississippi River?

A. The combination basis is predominant, I would say.

Q. And the factor east of Chicago is the same proportional rate you have been talking about this afternoon?

A. The factor east of Chicago in that case would be what is called the reshipping rate, somewhat lower than this northwest proportional that Mr. Cole talked about.

Q. Would there be any difference in the level of that rate on a through movement and a level of the rate that applies when grain stops at Chicago, is transited, and moves out six months later?

A. Well, there isn't any difference; I do not care to go into the theoretical question involved; whether they should be or not, I don't know.

Mr. Enoch: That is all.

[fol. 1646] Exam. Taylor: The exhibits are received, subject to the objections made.

The Witness: May I ask the reporter to correct the numbers; Mr. Cole said I said 51 to 58; it should be 50 to 58.

(Protestants' exhibits 50 to 58, Witness Childe, received in evidence.)

Exam. Taylor: The hearing tomorrow morning will probably be in Room C and D, on the first floor. The hearing will run from 9:00 o'clock until 12:30. We will now adjourn until 9:00 o'clock tomorrow morning.

(At 4:40 o'clock p. m., an adjournment was taken to 9:00 o'clock a. m., tomorrow morning, Saturday, January 20, 1940.)

[fol. 1647]

Morrison Hotel,
Chicago, Illinois,
Saturday, January 20, 1940.

Before R. G. Taylor, Examiner

Hearing resumed at 9:00 o'clock a. m.
Appearances: As heretofore noted.

Proceedings

Exam. Taylor: Let's come to order.

W. T. TANNEHILL, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Cole:

Q. Mr. Tannehill, you have been previously sworn in this case, have you not?
A. Yes, sir.
Q. And you are the same Mr. Tannehill who testified at a previous sitting of this particular issue, are you not?
A. Yes, sir.

Mr. Cole: Mark these for identification, please.
(Exhibits 59, 60 and 61, Witness Tannehill, marked for identification.)

By Mr. Cole:

Q. There have been three exhibits distributed, Exhibits 59, 60 and 61. Will you shortly explain just what those are and what they purport to show?
[fol. 1648] A. Exhibit No. 59 is a statement of the production of corn in Illinois and Indiana counties for the year 1938, as taken from the Illinois Cooperative Crop Reporting Service and shows the counties in Illinois in which are located various grain shipping points that have been mentioned in this proceedings as being affected by the river movements; some of the points are on the river and some, of course, are beyond. It also shows the production of corn in the northeastern Indiana counties as shown on the map.

By Mr. Belnap:

Q. Northwest Indiana, please?

A. Northwest; thank you, sir. Some have already been affected by the low intrastate rates and others will be affected— would have higher rates than would be applicable from the river points by the application of the proportional rate from Chicago.

Exhibit No. 61 is a list of points in Illinois in the counties shown in Exhibit 59 that have been mentioned here, and it shows the distances to New York and Buffalo by rail, direct short line, and via rail through Chicago. The first block shows the through charge made up by using the river charge of 4⅛ cents, which was shown in previous exhibits to Chicago, plus the reshipping rate beyond; and the succeeding blocks show the rates to New York, domestic and export, and the rate to Buffalo from the other points.

On Page 2, we call your attention to numerous—to a [fol. 1649] number of Indiana points through which this traffic to the East would move and the rates from those points, which it will be noted that the domestic rate to New York from these Indiana points, either 34 or 34½ as against a charge of 30⅛ cents from the river points of La Salle, Morris, Ottawa and Seneca.

I think that is all I have.

By Exam. Taylor:

Q. Just for information, the rate in the last column from Buffalo, is that the barge-rail rate?

A. The 25⅝?

Q. Yes.

A. Yes, barge-rail charge.

By Mr. Cole:

Q. Mr. Tannehill, all of those barge-rail rates are charges, are they computed by including in those figures shown four and an eighth cent as being the water charge, that four and an eighth cent appearing on your Exhibit No. 5 that you put in at the previous hearing?

A. Yes, sir.

Mr. Cole: I would like to offer at this time Exhibits 59, 60 and 61.

Exam. Taylor: They will be received.

(Exhibits 59, 60 and 61, Witness Tannehill, received in evidence.)

By Mr. Cole:

Q. Mr. Tannehill, during the course of this proceeding, there have been references made to Mechling Barge Service, [fol. 1650] the L. I. Hay Company——

Mr. Brown: John I.

By Mr. Cole:

Q. John I. Hay and the Allied Barge Company.

Mr. Brown: Corporation.

By Mr. Cole:

Q. Allied Barge Corporation and the Dewey Grain Company, connected with the Lawrence Transportation Company. Those are the companies that are referred to as operating up the Illinois Waterway with grain. Have there been any present or past arrangements with any of those transportation companies operating on the Illinois Waterway, under which arrangements there were any understandings as to transportation beyond Chicago on any of that traffic other than the arrangements that were set out in the tariff extracts that you have introduced at the previous hearing?

A. You mean any agreements or understandings with the barge lines, or whether you mentioned them all—any of those barge lines?

Q. Yes, have there been any?

A. No, sir, there have not.

Q. Is this proposed change in the tariff construction made for the purpose of eliminating grain from the application of the proportional rates east of Chicago that moves into Chicago via those barge and water lines up the Illinois Waterway?

A. Yes, sir.

Mr. Cole: That is all I have on direct.

[fol. 1651] Exam. Taylor: Any questions by respondents? Counsel for respondents?

By Mr. Enoch:

Q. I understand that Mr. Tannehill's answer would apply, namely, that there have been no arrangements of any kind, not only with the barge companies named by Mr. Cole but any barge company bringing grain into Chicago, is that right?

A. That is correct.

By Mr. Belnap:

Q. That would include the Federal Barge Line, would it not, Mr. Tannehill?

A. It would, so far as any rates that are not on file with the Interstate Commerce Commission.

Q. Doesn't it also include the Federal Barge Line, in so far as rates which are on file with the Interstate Commerce Commission?

A. So far as I know, it does. Now——

Q. That is right.

A. Now, I am quite certain that we have never had any conferences with respect to any rates via Chicago. There are no through rates via the Federal Barge to Chicago.

Q. You have no arrangement, you haven't met and talked about that?

A. No, sir, not about Chicago.

Exam. Taylor: Mr. Brown.

Mr. Belnap: I have some more.

Exam. Taylor: This is direct examination. Mr. Bradford?

[fol. 1652] Mr. Bradford: No, sir, nothing.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Is there a like lack of arrangements as to the lake lines which bring grain into the Lake Erie ports from whence you publish beyond rates for application on ex-lake grain?

A. There are no agreements or understandings with any of the lake lines, cargo carriers, in so far as rate application is concerned. Now, that doesn't apply to rates, you understand, with the MAT line.

Q. I understand.

A. The GLT.

Q. I am speaking about the situation where you have a separately established factor applicable from the port, and applicable on grain which has had a prior transportation by water. You understand that?

A. I understand that.

Q. And that is the situation to which your answer applies?

A. Yes, sir.

Q. Mr. Tannehill, take your lake cargo coal adjustment, where you publish from the coal fields to the lake ports rates lower than the local rates to the ports, conditioned on a move beyond by a lake vessel. Is there, in that situation, a similar lack of arrangements covering the through transportation?

[fol. 1653] A. I really can't answer that, because I have never had very much to do with coal rates.

Q. Don't you know that the movement on the lake is under rates not on file with the Commission?

A. I do, but I wouldn't want to say yes or no direct to your question, because I am not familiar enough with coal rates.

Q. What is the purpose of your Exhibit 61, Mr. Tannehill?

A. The purpose of that is to show that many of the points in that exhibit are away from the river, and it shows that the all-rail rate from those points, such as Beaverville that was mentioned by one of the witnesses, he having a farm at Beaverville, Illinois, located probably 75 miles south and a little bit east of Chicago on the Big Four Railroad, and this grain coming in from La Salle, Morris, Attowa, Seneca, via the river; and the continued application of the reshipping rates to eastern destinations, the Big Four Railroad handling the grain out of Chicago, would handle it out of Chicago through Beaverville at a rate a little in excess of 4 cents a hundred less through from La Salle, Morris, Attowa and Seneca than they would charge that man from Beaverville. Now, that is the sum and substance of the exhibit all the way through.

Q. Returning for the moment to this matter of arrangements. You presented an exhibit which showed excerpts of your rate tariffs, reciting the conditions under which various proportional reshipping rates applied. Do you not [fol. 1654] also have in effect a transit tariff, a separate

tariff which governs the matter to some extent, as far as the application of the rate is concerned?

A. Yes, we have a transit tariff that is applicable at Chicago.

Q. And doesn't that transit tariff come into play in connection with the application of proportional and reshipping rates?

A. Yes, sir.

Q. Carries provisions relating to the billing and the manner in which it should be cancelled and the records to be kept?

A. Yes, sir.

Exam. Taylor: Might I interrupt there?

Mr. Belnap: Sure.

By Exam. Taylor:

Q. Can you state, Mr. Tannehill, whether there is a similar transit tariff covering shipments that Mr. Belnap referred to that moved via lake down to the Lake Erie ports?

A. No. Those are carried in the rate tariff, Mr. Examiner.

Q. What do you mean, "those are carried"?

A. The rates are carried——

Q. The rates, but there is no transit.

A. No transit. With the exception of the application of transit tariff at Buffalo to perhaps land-locked mills on a competitive basis with those that reach the water, which, by the use of the transit tariff, provides for the absorption of the switching; but otherwise the Lake Erie ports, the rates are published ex-lake.

[fol. 1655] By Mr. Belnap:

Q. That is, the provisions, as to the application of rates are contained in the rate tariff?

A. Yes, sir.

Q. The same thing is true as to the proportional rates out of Chicago, both ex-lake, ex-rail and ex-river at the present time, isn't it?

A. Yes, sir.

Mr. Cole: I would like to ask Mr. Belnap, when he is addressing inquiries to Mr. Tannehill about the Chicago

situation, you are referring to provisions of tariffs already in evidence here?

Mr. Belnap: Part of them are already in evidence.

Mr. Cole: I object to any further inquiry about tariffs, which is sort of a roving inquiry, unless the tariffs are identified. I want to know what provisions——

Mr. Belnap: I think it would be well to have him identify the tariff. As far as I am concerned, we can have it made a matter of record by stipulation.

Mr. Cole: No, I think we ought to be talking about——

Exam. Taylor: A specific tariff.

Mr. Cole: Identify the tariff, if Mr. Tannehill is talking about provisions thereof, which purport to have some bearing on this case.

By Exam. Taylor:

Q. Can you give us the ICC number of that tariff; the tariffs here at Chicago and the one at Buffalo to which you [fol. 1656] referred?

A. I can supply them but I can't give you the——

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: ICC 3204 is the transit tariff at Chicago, Afent B. T. Jones, ICC 3204; became effective January 15, 1939. Contains rules governing transit privileges on various commodities, including grain, transit grain, milling and malting and track grain.

By Exam. Taylor:

Q. And that would be the tariff that would be applicable in connection with rain originating on the Illinois River at points such as La Salle, Morris, Ottawa and Seneca, M[illegible]ing to Chicago, and which has in the past been given t[illegible] benefit of the proportional rates east?

A. Yes, sir, where it goes into an elevator.

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: Agent B. T. Jones' ICC 3356 is applicable on ex-lake grain from Lake Erie ports, Fairport Harbor,

Painesville, Cleveland, Toledo, et cetera, to trunk line and New England territory.

By Exam. Taylor:

Q. But that is the one that refers to——

A. That is not the one at Buffalo which is published by Eastern lines.

Mr. Brown: Curlett.

[fol. 1657] The Witness: By Agent Curlett; and I will furnish the ICC number of that.

Now, I want to further state——

Exam. Taylor: That will be ten days to do that.

The Witness: I will try to do it this morning.

By Exam. Taylor:

Q. You will try to do it this morning?

A. Yes, sir. I want to state further, in answer to Mr. Belnap's inquiry that the statements I made with regard to the application of ex-lake rates on grain from Lake Erie ports is only applicable to Trunk Line and New England territory. There are no ex-lake rates on grain from the CFA Lake Erie ports to Central territory.

Exam. Taylor: Off the record.

(Discussion outside the record.)

By Mr. Belnap:

Q. Do you want to correct that last statement, Mr. Tannehill?

A. Yes, I will correct that last statement, that there are a few rates that are published as ex-lake rates, I think, out of Toledo westbound.

Q. Cleveland?

A. I seriously doubt Cleveland.

Q. Now, at Buffalo and your Lake Erie ports, regardless of where you do have the ex-lake rates, how is the application policed?

A. I cannot tell you at Buffalo how it is policed.

Q. I understand there is no tariff provision containing [fol. 1658] policing requirements, was that your testimony when you said there is no transit tariff?

A. There is no transit tariff involved.

Q. Well, as far as this Jones' Tariff ICC 3204, isn't this the fact, that it carries the provisions under which you operate transit privileges in connection with single-factor joint through rates and also contains provisions regarding the policing of the application of reshipping and proportional rates?

A. You are talking now to Chicago?

Q. I am talking of Jones' ICC 3204 at Chicago. Is what I said correct?

A. What you said is correct, yet——

Q. Let's forget for a moment the transit under joint through rates, and talk about policing requirements to the application of proportional or reshipping rates.

A. There is no reason why, under the existing tariff—I am confident I am right—that if there were facilities for the interchange between the barge and the rails, for direct loading from barge to car, that that tariff need apply at all under the rate tariff, if the barge line furnished the necessary documents to show that it originated on the barge. That is, the same document that they turned over to the rail carriers, their bill of lading, the reshipping rate today would apply just the same as going through transit house.

By Exam. Taylor:

Q. In other words, they wouldn't have to register the [fol. 1659] billing?

A. They would register that billing at the transit house; it goes into transit and the through movement is stopped.

Q. You mean it goes through the elevator?

A. Yes.

Q. That is the present method of handling?

A. Yes.

Q. Now, I am talking about what you refer as to reloading from the barge direct to the car, if that could be done.

A. That could be done.

Q. There would be no transit house to register the billing with?

A. That is right, but the same document could be furnished the rail carriers, and under the rate tariff, it would apply.

By Mr. Belnap:

Q. In other words, if I understand what you are trying to say, that the proportional rate would apply on a continuous through movement or on a movement temporarily interrupted at Chicago?

A. That is right.

Q. That is the sum of what you are just saying, is it not?

A. Yes, sir.

Q. Provided you comply with the policing requirements as to the handling of the inbound billing?

A. That is contained in the tariff.

Mr. Enoch: I don't understand that, Mr. Belnap.

Mr. Belnap: I understand it.

[fol. 1660] By Mr. Belnap:

Q. Are there policing requirements in the rate tariff or are there in Jones' ICC 3204?

Exam. Taylor: Wait a minute, you object?

Mr. Enoch: I object to that because we are getting some testimony about what is in a tariff that is already in evidence here, and I don't believe that is a proper subject of inquiry. The tariff will show for itself what is in there.

Exam. Taylor: I can't agree with you, Mr. Enoch. He is explaining something that is in issue here and is very difficult to understand. I would like to have it in.

Mr. Enoch: I haven't the slightest objection if Mr. Tannehill and Mr. Belnap understand one another. That is the only thing.

Exam. Taylor: In other words, you want to know if Mr. Tannehill adequately understands the question that Mr. Belnap is raising?

Mr. Enoch: Yes, that is right.

The Witness: Yes, sir.

By Exam. Taylor:

Q. Your answer is yes?

A. I understand his question.

Mr. Belnap: I think I have an unanswered question.

The Witness: I think you have, too.

Exam. Taylor: It was objected to because he didn't understand whether Mr. Tannehill understood it or not. Now, will you read Mr. Belnap's question, Miss Reporter?

[fol. 1661] (Question read.)

The Witness: They are in the rate tariff.

By Mr. Belnap:

Q. Sir?

A. They are in the rate tariff. There are requirements in the rate tariff.

Q. Are all the policing requirements incident to the proportional and reshipping rates in the rate tariff or are some of them in Jones' ICC 3204?

A. Well, it is owing to what policing requirements you are talking about. The requirements as to the application of a rate are in the rate tariff.

Q. That is right.

A. The policing requirements, that tariff there is practically all policing requirements of one form or another.

By Exam. Taylor:

Q. That tariff you are referring to——

A. Is ICC 3204.

By Mr. Belnap:

Q. Now, do I understand you to say that at Buffalo, the Lake Erie ports you have nothing, no policing requirements in any tariff?

A. They are in the rate tariffs. I said it was not necessary for a transit tariff.

Q. I am just talking about policing requirements in connection with the application of separately established factors.

A. They are——

Q. And that is the only thing I am inquiring about, as [fol. 1662] far as what you call a transit tariff is concerned.

A. The application of any rate and the application of these rates is carried in the rate tariffs.

Q. I understand about the application. It tells you when they will apply. Now, I am talking about the rules and regulations which the carriers maintain so that they can

assure themselves of the fact that the rate is correctly applied. I term those policing requirements. You do, too, do you not, Mr. Tannehill?

A. You are getting beyond transit. Now, so far as transit is concerned——

Q. I am not trying to confuse it with transit; I am trying to keep it separate and distinct.

A. No, you are trying to confuse me also.

Q. I beg your pardon, sir. I don't want to.

A. I maintain this, that any tariff that names a rate names the application of that rate, and shows when it is applicable or how it is applicable. And in order to get that rate, they must furnish the necessary data that will bear out their contention that that rate is applicable. Now, that isn't of necessity—it isn't necessary to publish a whole string of rules to show on an uninterrupted movement, for example, what or how we will go about getting that, but the rate tariff itself specifies how that rate applies.

Q. Now, you are talking about an uninterrupted through movement, is that correct, Mr. Tannehill?

[fol. 1663] A. Yes.

Q. Now, let's take the interrupted through movement, where the grain moves into an elevator.

Mr. Cole: Where?

Mr. Belnap: At the point from which it is received.

The Witness: Into the elevator from a boat.

By Mr. Belnap:

Q. From a boat, for example.

A. Very well.

Q. In that situation, both at Chicago and your Lake Erie ports, you have provisions in your rate tariffs, do you not, which describe the conditions and the circumstances under which the reshipping or proportional rate will apply?

A. Yes, sir.

Q. Chicago and the Lake Erie ports are identical in respect to that, is that true?

A. Well, in principle. I can't tell you whether the recording is the same form.

Q. No, no, but in the fact that the rate application is in the rate tariff?

A. Yes.

Q. Now, many times to you have at either point some additional rules dealing with this interrupted movement which relates to the policing of the application of the rates?

A. None published, no.

Q. At either point?

[fol. 1664] A. At the Lake Erie ports, no.

Q. What about at Chicago?

A. Nothing other than that.

Q. Well, is there something——

A. Other than ICC 3204.

Q. There are some rules at Chicago which you don't have at the Lake Erie Ports?

A. No, I don't know of any.

Exam. Taylor: You mean in the rate tariff now, do you?

Mr. Belnap: No, I am talking about rules which police the transit, or rather police the application of the separately established proportional rates.

Exam. Taylor: As I see it——

The Witness: Nothing other than the rate tariff.

By Mr. Belnap:

Q. That is true both at Chicago and Buffalo?

A. That is right.

Mr. Cole: Wait a minute, that definitely is not right.

Exam. Taylor: That is not in accordance with what has been previously stated.

Mr. Belnap: I think it is different, too.

Exam. Taylor: As to the rate tariff it is true, but where it moves through a transit house at Chicago, it seems that this Tariff 3204 would apply and the policing rules in 3204 would apply to transited shipments moving through Chicago.

The Witness: To transited shipments, yes, sir.

[fol. 1665] By Mr. Belnap:

Q. When you say transit shipments, are you talking about a shipment which seeks the benefit of a single-factor joint through rate from an interior origin to a final destination?

A. It wouldn't necessarily have to be a single factor.

Q. Well, is there a difference in your mind between the application of a rate less than—a proportional less than a

local from a Lake Erie port and the application of a rate less than the proportional from Chicago?

Mr. Cole: And there you have got it wrong. You said the last there, less than the proportional.

Mr. Belnap: All right, a proportional less than the local. May I restate it, please:

By Mr. Belnap:

Q. Mr. Tannehill, from the standpoint of tariff publication, the manner in which you go about making the rate applicable, is there a difference between the situation on Lake Erie ports, where on ex-water business you provide a separately established factor less than the local rate from the port and the situation at Chicago where you provide a separately established factor less than the local from the port?

A. No.

Mr. Belnap: That suits me. I still am a little dark about it.

Exam. Taylor: Is that all you have.

Mr. Belnap: That is all I have.

[fol. 1666] Exam. Taylor: Any other cross-examination of this witness? (No response.)

By Exam. Taylor:

Q. Now, Mr. Tannehill, in handling shipments from the lake, first at Chicago and second at the Lake Erie ports, not including Buffalo, what kind of a record do you keep so that you know that the proportional rate would be applicable on the shipment to a destination in Trunk Line or New England territory?

A. That is handled through the Inspection Bureau.

Q. Then you do record the——

A. Oh, yes.

Q. —lake traffic and police it to that extent?

A. Yes, sir.

Q. At the Lake Erie ports?

A. Yes, sir. I can give you the ICC number of the tariff now from Buffalo.

Q. Yes, give that.

A. Agent Curlett's ICC A-563.

Mr. Belnap: Mr. Examiner, you excepted from your question Buffalo, the question you just asked. I was wondering if you would include Buffalo, too, in a separate question so as to make the answer comprehensive.

The Witness: That same thing is true at Buffalo.

By Exam. Taylor:

Q. How do you go about recording the lake transit, the lake inbound movement?

[fol. 1667] A. The Inspection Bureau have a record of that just the same as they have a record of all the grain that comes in which is furnished by the elevator house.

Q. What shows that, that it is registered?

A. They will register the boat manifests similar to what was put in by Mr. Belnap with the Inspection Bureau, or——

Q. They wouldn't have the bill of lading; take the place of the bill of lading.

A. Yes, the boat manifest. You remember—I forget the exhibit number.

Q. That is interchangeable, so far as manifests for boats are concerned?

A. I assume, I don't know, but you will recall that Mr. Belnap put in a yellow boat manifest at the first hearing.

Q. Yes, it is in the docket.

A. That is right.

Mr. Belnap: May I ask one more question, Mr. Examiner?

Exam. Taylor: Just let me follow that up.

By Exam. Taylor:

Q. Is there any other form of evidence submitted on that?

A. Well, no, not that I know of, other than, of course, all of the grain in the house is checked and it must balance. There may be grain coming into that house all-rail and those are kept in the accounts.

By Mr. Cole:

Q. Or by truck?

[fol. 1668] A. Or by truck. Every bit of grain that goes into that house is checked currently by the Inspection Bureau so that if a million pounds of grain comes in by water, that is added to the inbound water when it is registered.

By Mr. Belnap:

Q. I would understand, then, that the elevators at Buffalo and at Toledo and at the Georgian Bay ports are transit houses in the same sense as you referred to the elevators in Chicago as transit houses.

A. The Buffalo and Lake Erie ports. Don't ask me about Georgian Bay ports: that is Canada. I don't know a thing about it.

Q. But as to Toledo and Buffalo, the elevators at those ports may be referred to as transit houses just as you have used that term in referring to elevators in Chicago, is that correct?

A. Yes, sir, that is correct.

Exam. Taylor: Any other questions?

Mr. Cole: I would like to have something on redirect.

Exam. Taylor: Redirect.

Redirect examination.

By Mr. Cole:

Q. Mr. Tannehill, in connection with this handling of grain through Chicago, no matter how it gets in or how it goes out, if it goes out on the rail rates, are there certain rules and requirements published in tariffs on file with the Interstate Commerce Commission, extracts of which you have introduced in evidence in this case?

[fol. 1669] A. Yes.

Q. Do those tariffs which do provide the rules and regulations and show the requirements for the grain to move out under a certain rate application, do those tariffs show all of the rules and regulations that it is necessary to meet with for that grain to get the application of such level of proportional rates, all rates?

A. Yes.

Q. Then these other provisions that we have referred to here, when we have referred to a transit tariff, is there anything in any of those transit tariffs that modify in any way, or that detract in any way from any of the definite rules that there are in the rate tariffs?

A. No.

Mr. Cole: That is all I have. Thank you.

Exam. Taylor: Does that bring up any further questions?

(No response.)

By Exam. Taylor:

Q. Now, Mr. Tannehill, if you will look at your Exhibit 59, did you wish to know the exhibit left blank there in the heading?

A. I will have to get that. I am sorry.

Mr. Belnap: That is Exhibit 60.

The Witness: Oh, wait a minute. That is right, that is No. 60.

By Exam. Taylor:

Q. Now, on Exhibit 61, in reply to questions by myself, [fol. 1670] you stated that the 25⅝ cent rate from La Salle, Morris, Ottawa and Seneca, to Buffalo, New York, included 4⅛ cents for the water movement up to Chicago; but below that, there is nothing to show that the rate of 28½ cents, for example, from Beaverville to Buffalo did not also include it. I want to know whether you do or not; from there on down.

A. No, Beaverville is not on the river.

Q. Then the line "all-rail" should have been extended clear across the page?

A. That is correct.

Q. Now, Mr. Tannehill, I don't know whether you were here yesterday when I asked and one of the barge lines consented to furnish some further information with respect to exhibits which had previously been introduced by you and Mr. Belnap in this case, covering individual shipments. In other words, we want the record complete as to the inbound and outbound billing. Now, that is to be furnished by one of the barge lines for Exhibits 29, 32, 34 and 35.

Now, I would like to know if you could furnish or have the Inspection Bureau—I think this information is readily available at the Inspection Bureau—the transit shipping directions on those four shipments, and I can give you the transit bureau number and the outbound bill of lading or copy of the outbound bill of lading and the outbound freight bills on those four and one additional.

[fol. 1671] A. You want the outbound waybill that carried the car?

Q. Yes.

A. Off the record.

Exam. Taylor: All right.

(Discussion outside the record.)

Exam. Taylor: I want it for these transit numbers: 379106, 391584, 392790, 392626 and 319812.

The Witness: Were any of those exhibits 29 to——

Exam. Taylor: They are right here. Off the record.

(Discussion outside the record.)

Exam. Taylor: Add the 255116 for the benefit of Mr. Belnap.

The Witness: That is the only one you want a copy of.

Exam. Taylor: Let's get back on the record.

By Exam. Taylor:

Q. Now, Mr. Tannehill, I believe, I don't know whether you were present when a witness was referring to lake shipments, and the question was asked on lake shipments into Chicago, from Superior or Duluth, was there any rail movement beyond; and as I recall, the witness replied that there wasn't any grain grown at Superior and Duluth, so it must have had a rail movement beyond. Did you hear that testimony?

A. I think I did, yes. I heard someone say it, I don't know what witness.

Q. In connection with the questions that were asked here this morning, I would like to ask you, do you recognize any [fol. 1672] difference in transportation conditions as of such shipments, rail-lake-rail through Chicago and proportional beyond to the East and the barge movements from La Salle, Morris, Ottawa and Seneca, or any other point on the Illinois Canal?

A. Yes, sir.

Q. Illinois River to Chicago and beyond?

A. Yes, sir, we do.

Q. Do you recognize any difference in transportation in those two sources of movements?

A. Well, now, recognizing difference in transportation conditions, so far as our rails, after we get it, there probably isn't a different transportation condition. But we recognize a different reason for the continuation of the application of these proportional or reshipping rates to this lake billing coming in from Duluth, Fort William, Port Arthur, Superior, for the reason that, first, as the gentleman said, there is no grain grown at Duluth. So that while

the tariff does not provide it, it would have an inbound rail haul. And further, in the continuation of the application of the proportional or reshipping rates to this lake traffic, we are not depriving ourselves of a greater rail haul nor are we depriving our connections west of us of a rail haul because that grain, when it gets to Duluth, will either stay until it can go down the lakes to Lake Erie ports or some port east, or it may move to Chicago and go into storage here and then move out by rail. It gives us that opportunity [fol. 1673] to get traffic from Chicago over our rails, which we would—probably wouldn't otherwise get. Now, when you get down to the barge line——

By Mr. Belnap:

Q. That is east of Chicago, you are talking about?

A. I am talking about east of Chicago.

Q. Yes.

A. When you get down to the barge line, our carriers, such as the New York Central and the T P & W, Pennsylvania, B & O serve Illinois, and here is a barge line that is coming right over into the territory on its lines and taking business away from those rail lines' origins at those stations, taking it over at the river, bringing it to Chicago and then we will take it from there and cut our own throats by less haul on the traffic than we would get if it moved in its normal way from the country station.

By Exam. Taylor:

Q. Speaking of "normal" as to lake movement, would the normal movement be to Chicago from Duluth and Superior?

A. No, sir, I do not think it would.

Q. It has been already stated in the record, the only time grain would move to Chicago would be in case of shortage in this territory around Chicago.

A. I would like to have a grain man say when this grain would move via Chicago from Duluth.

Q. I brought that up because you said "normal."

[fol. 1674] A. Because you will recall that on Exhibit No. 28, Mr. Belnap had to go back to, I think, 1938 to find a cargo manifest of grain coming into Chicago by lake from Duluth.

Q. Well, does an ex-lake shipment pay more freight into Chicago than ex-barge grain?

A. We must assume it does, Mr. Examiner, for the same reason that several of the gentlemen made statements that, well, we know there is no grain grown at Duluth or at Superior. That grain is quite likely to originate west of Minneapolis or at least in the Minneapolis territory; be more likely to originate west of Minneapolis, we will say in the Dakotas.

Q. Then the total charge would be in excess of the combination of locals through Chicago?

Mr. Belnap: May I hear the Examiner's question?

Exam. Taylor: Read my question, Miss Reporter.

(Question read.)

Mr. Cole: I don't understand you, Mr. Examiner. I don't get that question.

By Exam. Taylor:

Q. What we are trying to get at more than anything else is, would there be any Fourth Section violation?

A. Would there be any Fourth Section violations on grain, we will say, originating in the Dakotas moving up to Duluth at a local rate and from then water to Chicago and then on a proportional rate east?

Mr. Cole: May I have it identified a little more what kind [fol. 1675] of a Fourth Section violation, Mr. Examiner, you are inquiring about?

Exam. Taylor: Any kind.

Mr. Cole: There are two general types, however. One is the aggregate intermediate clause and the other is the long-haul clause and short-haul clause. I don't see how there could be a Fourth Section violation.

The Witness: All of the factors are not published and on file with the Commission. There is a portion of that haul that goes out of the control of the railrads.

By Exam. Taylor:

Q. Now, let's get back to your proposition that you referred to first, as a justifying reason for requiring the transit on ex-lake shipments, because you assumed that there must have been a rail haul up to Duluth or Superior. In other words, adjust the through rate because of some reasons not very clear right here right now, somewhat in

the same fashion that the Commission established or prescribed different proportional rates out of Chicago, out of Minneapolis, St. Paul, than they did out of Kansas City or Omaha. In other words, they would shrink the proportional rate through Minneapolis and St. Paul where it was necessary, or bring the Kansas City, St. Louis, Omaha rate up so that they would level out in the total through charge.

A. No, we have never gone into this——

Mr. Cole: Pardon me. Mr. Tannehill, I don't think you [fol. 1676] understood the Examiner's question. I would like the reporter to read his question to you again.

(Whereupon the record was read as follows: "Now, let's get back to your proposition that you referred to first, as a justifying reason for requiring the transit on ex-lake shipments, because you assumed that there must have been a rail haul up to Duluth or Superior. In other words, adjust the through rate because of some reasons not very clear right here now, somewhat in the same fashion that the Commission established or prescribed different proportional rates out of Chicago——")

Exam. Taylor: No, to Chicago.

(Remainder of question read.)

The Witness: Well, as it is corrected, it is quite different than it was first put up, Mr. Examiner, because you said "from Chicago" the first time. Now you say to Chicago.

By Mr. Cole:

Q. Do you understand the question, Mr. Tannehill?

A. I am afraid that is a question I would have to write out on paper and look it over.

Mr. Cole: Mr. Examiner, may I ask a question there?

Exam. Taylor: Certainly.

Mr. Cole: With the attempt to probably clear something up?

Exam. Taylor: Certainly.

Mr. Belnap: Ask him a question; don't state something. [fol. 1677] Mr. Cole: I am not going to state a thing. Mr. Examiner, do you refer to the different influences that were back of the construction of the proportional rates by the

Commission when they made those proportional rates from Minneapolis to Chicago.

Exam. Taylor: That is exactly what I mean.

Mr. Cole: And then made the proportional rates from Kansas City to Chicago?

Exam. Taylor: That is absolutely what I am talking about.

Mr. Cole: I thought so. And with that query, perhaps Mr. Tannehill could——

The Witness: Well, Mr. Examiner, I am speaking, of course, for the roads east of Chicago, Peoria and St. Louis, and I am not entirely familiar with just why they did what they did; Kansas City to Chicago versus Minneapolis to Chicago. But I am quite certain that we didn't establish this ex-lake from the ports for the same reasons that they put 13 cents from Minneapolis to Chicago and 16 or 17 cents from Kansas City to Chicago. We think we got an awful bad trimming in that 15037 case, where we had to take the shrink. Because Minneapolis was three cents less than Chicago, we had to give Kansas City rates three cents less on our Eastern proportion of that, so we didn't make any rates for that reason.

Exam. Taylor: Any further questions?

Mr. Brown: Mr. Examiner, somebody brought up the question of including in this investigation as to what hap- [fol. 1678] pened to the inbound grain after it got here. I would like to test the witness a little bit on the question of ex-lake grains as fixed by the Commission.

By Mr. Brown:

Q. Mr. Tannehill, do you remember that the Toledo Produce Exchange, as early as 1912 or 1913, filed a complaint with the Interstate Commerce Commission asking for a certain adjustment of rates, ex-lake, complaining that Buffalo was preferred?

A. I don't know the date. There was a complaint filed and a decision rendered. As I recall it, they gave Toledo 78/60 of *of* the Buffalo rate.

Mr. Brown: For the record, I would like to read——

Mr. Belnap: The citation?

Mr. Brown: 27 ICC 536; 30 ICC 498; 50 ICC 515.

By Mr. Brown:

Q. Mr. Tannehill, do you remember later that the city of Oswego, which had erected an elevator on the water, also complained to the Commission about the adjustment of rates being preferential to Buffalo and the Commission fixed a relationship as between Oswego and Buffalo?

A. I remember that there was either a city or state-owned elevator established on the canal at the lake at Oswego, and I believe there was a Commission case involving the rates related to Buffalo. I have no information, I was not involved in the case directly and I have no information as to when or what the citation of that case was.

[fol. 1679] Q. Well, it began about 1927. I should like to give the reference to the Commission's decision. 146 ICC 293 and 151 ICC 717.

Do you recall that still later there arose a dispute as to the relationship which would exist in the ex-lake rates from Buffalo, from Ogdensburg with respect to Buffalo in New York?

A. Yes, I recall that indirectly, not that I was involved in it.

Q. That is a still more recent case. The Commission's decision will be found in 208 ICC 385, 209 ICC 500, and I am calling attention to this matter so that the Commission will understand that there is competition between all of the lake ports, including Chicago on ex-lake grain to the East.

Mr. Belnap: I have one more question, Mr. Examiner.

Exam. Taylor: Mr. Belnap.

Mr. Belnap: Brought out by your examination.

By Mr. Belnap:

Q. Do the Eastern lines have any interest in the rail lines west of Duluth?

A. What kind of interest?

Q. Financial interest. Do they own any of them?

A. I don't know anything regarding the financial structure of our railroads, but we do have a brotherly interest in all rail carriers, just the same interest in those carriers as we would have in Mr. Enoch's railroad, the Rock Island Railroad down through Illinois. He is right in the hotbed [fol. 1680] of this water situation. What he does, it spreads over to our railroad, so we must have an interest from the

standpoint of not doing things that are going to cut the revenues of the railroads somewhere else.

Q. Mr. Tannehill, as far as the application of your ex-lake rates, either Chicago, Toledo or Buffalo is concerned, are they applicable on grain which comes down the lake which move towards Duluth by truck and never saw a railroad?

A. Yes, if there was such a thing.

Mr. Belnap: That is all I have.

Exam. Taylor: Is that all from this witness? (No response.) You are excused.

(Witness excused.)

A. E. Burwash was sworn and testified as follows:

Direct examination.

By Mr. Baxter:

Q. Will you please state your name and address to the reporter?

A. A. E. Burwash, Champaign, Illinois.

Q. What is your occupation?

A. I am a farmer.

Q. Do you have any affiliation with any country elevator?

A. Yes, sir, I am a director and vice president of the Savoy Grain and Coal Company at Savoy, Illinois.

Q. Where is that geographically located?

[fol. 1681] A. That is on the Illinois Central Railroad, 132 miles south of Chicago; about four miles south of Champaign, Illinois.

Q. In Champaign County?

A. In Champaign County, yes, sir.

Q. Do you know the approximate, that is the average approximate bushels that you ship out of there, that elevator?

Exam. Taylor: Out of an elevator at——

Mr. Baxter: Out of the elevator at Savoy.

Exam. Taylor: At Savoy?

The Witness: That varies with the crop season. Our elevator has averaged about 450,000 bushels a year in the last ten years. We have run as high as 600,000 and as low as 300,000.

By Mr. Baxter:

Q. That is considered one of the large country elevators in Illinois, isn't it?

A. It would be classed in the upper brackets, yes, sir.

Q. Are you a member of the Illinois Agricultural Association?

A. Yes, sir.

Q. Are you generally familiar with the issues in this rate case?

A. I think so, in a general way at least.

Q. You are not familiar with rate structures, as I understand it?

A. Absolutely not. I would hate to make any such statement. I know nothing about rate structures or how they are made or anything, and after seeing what is going on here, I see that it takes somebody a lifetime to know much about them.

[fol. 1682] Q. Has Chicago always been your natural grain market?

A. Yes, sir, the Chicago market. The Chicago futures market, I feel they always set the prices that we get for grain. Our grain prices are established by the Chicago futures market or cash market here in Chicago, less the cost of transportation to this market and the elevator charges, of course.

Q. Do you actually ship your grain to Chicago?

A. Formerly, that is going back—our elevator has been established since 1925—or 1905, and at that time, practically every bushel of grain was shipped to Chicago. It was consigned up here to commission houses. Since that time, due to the establishment of processing plants like Staley's at Decatur and other milling outlets, there has been an increased movement direct to mills and processing plants; so that at the present time, a very small proportion of our corn comes to Chicago. The direction in which it moves will depend upon the crops and the scarcity in various parts of the country.

Our grain may move to Chicago when there is a big export demand. It may move to the Southwest when there is a scarcity of grain in that territory. It may move into southern Illinois for feeding purposes by truck when there is a scarcity there. At the present time, our grain is largely moving to the processing plant at Decatur, Illinois, and to

the distilling interests through Indianapolis and into Kentucky and that territory.

[fol. 1683] Q. Does the movement of grain from the Illinois River have any effect on your grain bids at Chicago?

A. I do not feel that they have any effect. As I stated before, my belief, personal experience is that the price of grain is fixed to us by the price in the futures market or cash market here in Chicago, less our cost of transportation and handling.

Q. What is the usual trend of grain from Illinois points to Chicago?

A. The trend is fixed entirely by the price paid at Chicago as compared with the demand for grain in other directions. In other words, the trend of grain to Chicago will be entirely fixed as to whether the demand is heavier here, so that the price paid is higher than they can get in any other direction.

Grain is influenced, its movement, from a local country elevator—a quarter or even an eighth of a cent will change the movement in the direction of that grain, and in our territory, we are considered in one of the most competitive territories in the State of Illinois. Our grain can go in most any direction. We move grain to St. Louis, Indianapolis, Chicago, Decatur or in any other direction that there is a demand; and so that I feel that the amount of grain coming into Chicago would depend entirely upon whether the Chicago bid was higher or lower than the other competitive bids.

By Mr. Brown:

Q. You are talking about a cash bid now?

A. It may be cash bid or futures. You see, our bids are [fol. 1684] often ten days; that depends somewhat on the futures. They are not entirely fixed by either. Both have their influence.

By Mr. Baxter:

Q. One thing I meant by "trend" is what corn, for instance, is apt to move into Chicago, first?

A. The corn that will come into Chicago first is the corn from a territory which reaches a certain price level. For instance, the psychology of a farmer in selling his grain is

largely based on even figures, you might say. When corn reaches 50 cents, for instance, we will use that as an example, the farmers will sell more at 50 cents than they will at 49 cents or 51 cents. That is just a kind of a psychological thing. Even money sounds good. When corn reaches 50 cents, then the farmer will sell. He will fix his mind probably weeks ahead, "I am going to sell at 50 cents." Down in the territory that hits 50 cents first, those farmers will sell quite a bit of corn. In the territory which doesn't have the natural advantage or the rates that they can sell, they will hold theirs a little longer, and that will fix the corn coming from any territory at a certain time.

I have often observed that the corn in northern Illinois, where they have a natural advantage in rates, moves before our corn does in Champaign County, very frequently.

Q. By low rates you mean that would——

A. That might be either lower railroad rates or natural advantages, such as Illinois Waterway; it doesn't make [fol. 1685] any difference. I can cite you an example today:

Corn in the Illinois River territory is worth 54 cents to the farmers. In our territory at Savoy, it is worth 51. Naturally, there is more corn being moved out of the Illinois River territory than there is in our territory at Champaign County. Our elevator is not handling any corn. Yet the river territory has moved in a lot of corn this fall where we haven't moved scarcely any.

Q. At the previous hearing, Mr. Bradford and Mr. Burwell, in substance, testified that they could not compete, they could not pay the prices to compete with Illinois River grain. Am I correct in that statement?

Mr. Bradford: My testimony, as I recall it, Mr. Baxter, was that if the price of corn was set at Chicago and a reshipping rate of 26 cents was applied on the Illinois River corn, then to meet that competition, we would have to get that 26 cent transportation rate; and if the rate from the other point where we bought corn to New York was 38 cents, we would have to reduce the price we paid the country elevator or the farmer to meet the price established at Chicago.

By Mr. Baxter:

Q. In view of that statement, how would that affect your elevator in central Illinois, where their competition might be reduced?

A. I fell that any reduction in competition for corn to go to a certain point is to my advantage, and undoubtedly [fol. 1686] knowing that a certain milling interest would have to have corn, he can't get it out of the other territory, he will have to take more out of my territory and to get it, he will probably be willing to bid a slight advantage. That is often done.

Q. The only reason, then, you ship through Indianapolis or St. Louis, or to Decatur is that you get as good or better price for your grain at Savoy?

A. Absolutely. I will put it this way. In fact, on an equal bid, we would probably come to Chicago because Chicago is rated as being the fairest market in the country. On a slight advantage, maybe an eighth or a quarter of a cent, we would go the other direction.

By Mr. Brown:

Q. You get better treatment in Chicago than you do anywhere else?

A. Absolutely, on weights and grade.

Q. And inspection?

A. Absolutely. That is a commonly known fact and acknowledged.

By Mr. Baxter:

Q. Well, the fact that farmers living adjacent to the Illinois River have lower transportation costs, is that, in your opinion, any reason why you would like to see those rates cancelled out?

A. Absolutely not. I am in favor of the lowest rates possible because, as I stated, the price I get for my grain is dependent upon the price in Chicago less the transportation cost and the handling cost. Now, if I can get a lower trans- [fol. 1687] portation cost, I can get more for my grain. The man out there gets more for his grain. I just pointed out he is getting at least three cents more a bushel than I am because he has a lower transportation cost; and I would not, emphatically would not want to see him lose his advantage, an advantage which, if lost, would do me no good. It wouldn't help my price one cent and I would hate to be a dog in the manger and say that just because I couldn't get it, he shouldn't have it.

I feel that the benefit of the farmer in this state is that he should have a natural advantage in shipping his grain. I don't care whether it is by rail, by water, or by truck. He should take advantage of transportation and use the cheapest system for him. He has got to do it to compete, that is all there is to it.

Q. Is your elevator a member of the Farmers' Grain Dealers Association of Illinois?

A. Yes, sir, it has been a member for a great many years; 25 or 30 years.

Q. You read from the transcript Mr. Farlow's statement that was put in the record?

A. I did.

Q. As a member of his organization, do you agree with the position he has taken in this case?

Mr. Enoch: Just ask him what the position was he took, then we will see if that agrees with his.

[fol. 1688] Mr. Baxter: Do you want me to read the statement?

Mr. Enoch: I want to see if this man knows what position he did take.

The Witness: As I understand it, Mr. Farlow's position was this, that due to the fact that railroads—I am speaking now of his position to the elevator that is entirely out of the range of the Illinois barge lines; that has no way of using them at all. That his position was that, due to the fact that railroads lost tonnage of grain in the Illinois River Valley, that the rate paid by the other farmers on their grain in the State of Illinois would be raised.

By Mr. Enoch:

Q. What kind of a rate? Do you mean the rail rate?

A. The rail rate was raised, and therefore we were all penalized by that fact. Well, I think that, what little I know about the fixing of rates, there might be a slight reason for that, but everything else that has happened to the railroads in the last 20 years would also be involved.

They have lost coal hauling. The Illinois Central has lost lots of coal hauling. They have lost lots of livestock by trucks and there are so many other factors besides the loss of grain in the fixing of rates, that I think his state-

ment there that a 5 per cent loss in grain caused a 5 per cent increase in rates is rather far-fetched.

Q. Were you informed that that was his position?

[fol. 1689] A. I read it in the record. I didn't know anything about it until I read it yesterday afternoon.

Mr. Baxter: I believe that is all.

Exam. Taylor: Let me see. Can you develop from this witness just what his position is as to the cancellation of the application of the proportional rates east, just briefly?

Mr. Baxter: All right. I thought we answered that.

Exam. Taylor: I think you did too, but I just wanted to——

By Mr. Baxter:

Q. All right, will you please state the position of the people whom you represent as to what your position is in this proceedings?

Mr. Enoch: Pardon me, may I ask him to state who he does represent?

Exam. Taylor: He stated that.

Mr. Baxter: I qualified him as the vice president and director of the Savoy Elevator.

The Witness: That is right.

By Mr. Enoch:

Q. I thought you were talking about some farm organization?

A. No.

Q. I don't understand you are speaking for anybody but your own interest?

A. That is right.

Mr. Baxter: I asked him if he was a member.

The Witness: Speaking for the elevator members and [fol. 1690] farmers in my own vicinity, as a director of the Illinois Grain Corporation, we take this position: That we do not want to see any advantage in transportation cost lost by an group in the State of Illinois or any place else, for that matter, because our interests are for lower transportation in any way in which it can be obtained.

By Exam. Taylor:

Q. Whether you get the advantage or somebody else?

A. Some other farmer, that is right.

By Mr. Baxter:

Q. But in this particular proceedings, you are only speaking for the Savoy Cooperative Elevator Corporation?
A. That is right.
Q. And as a farmer?
A. And as a farmer, yes, sir.

Mr. Baxter: Does that answer the question?
Exam. Taylor: Any questions by protestants?
Mr. Root: Just one question.

By Mr. Root:

Q. Mr. Burwash, are the bids put out by your Savoy elevator bids at the elevator or F.O.B. the farm?
A. In our territory, our bids are all at the elevator. Our territory only extends an average of about six miles in diameter, and most of our farmers have their own trucks or they hire a man who sells and trucks the grain to the elevator, and our bids are all F.O.B. the elevator.
Q. Of course, when you said in your testimony you are [fol. 1691] paying 51 cents there today, you meant delivered at the elevator?
A. Yes, sir.

Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. Mr. Burwash, did you state all of the state organizations in which you hold any position?
A. No, sir.
Q. Are there some in which you hold a position which you didn't state?
A. I am a member of and an officer of Illinois Grain Corporation.
Q. What officer are you?
A. President.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Burwash, I understood that you are engaged in the farming industry?
A. Yes, sir.

Q. Are you in any sense what we term in traffic parlance as a rate man?

A. No, sir.

Q. Are you here intending in any way to indicate to the Commission that the present application of these rates is a correct situation from a rate standpoint?

A. I am not competent to answer that.

Mr. Baxter: I object to that, because Mr. Burwash is not [fol. 1692] qualified as a rate witness and he has stated that he knows nothing about freight rates.

Exam. Taylor: He also just now stated that he wasn't competent to answer.

The Witness: That is right.

By Mr. Cole:

Q. Then is your position this, as a member of the farming industry, and is your position simply this, Mr. Burwash: That if this is right from a standpoint, you would like to see it continued, but if it is wrong, you are not here asking that a wrong be continued, is that correct?

A. I am making only the request that fair rates, low rates, be maintained.

Mr. Cole: That is all. Thank you, Mr. Burwash.

Exam. Taylor: Mr. Day, any cross examination?

By Mr. Day:

Q. How much of a farm do you operate?

A. 770 acres.

Q. And you raise corn and other crops, do you?

A. Yes, we raise from ten to twenty thousand bushes*l* of corn.

Q. Per year?

A. Per year.

Q. How many did you have in 1939?

A. In 1939, about 13,000.

Q. Have you disposed of it?

A. No, sir.

Q. Did you get a Government loan on it?

[fol. 1693] A. On part of it.

Q. How much?

A. About 4,00 bushels.

Q. Is that stored on your farm?

A. Yes.

Q. Is your farm all in one tract?
A. No, sir, it is in three tracts.
Q. All located near each other?
A. Yes, sir.
Q. Did you raise any other crops besides corn?
A. Wheat and soy beans for market.
Q. Have you made any disposition of the 1939 crop other than the 4,000 bushels covered by the Government loan?
A. I have sold—no other disposition of my corn crop, no.
Q. You are holding it?
A. Yes, sir.
Q. For a higher price?
A. Possibly. We can't tell what the future has for it. We are holding it, that is all.
Q. How many bushels did you have in 1938?
A. In 1938, I wasn't farming quite as much land; I only raised about 11,000 bushels of corn.
Q. How many acres did you have then?
A. 540.
Q. Did you acquire this additional land in 1939?
[fol. 1694] A. I rented it.
Q. You rented it?
A. I rented 240.
Q. How much do you own?
A. I own directly 210 and have an interest in another half section.
Q. You reside in town, though, don't you?
A. No, sir, I reside on the farm; three miles south——
Q. How far is that from town?
A. South of Champaign, three miles, on Route 45.
Q. None of your corn would be handled via the waterway, would it?
A. No, sir, never has and never will, unless trucking and water rates—or the railroads raise their rates too much.
Q. If you paid any transportation charges on corn outbound, it would be by rail?
A. Yes, sir, on the Illinois Central Railroad.

Mr. Day: That is all.
Exam. Taylor: Mr. Enoch. Mr. Bradford.

By Mr. Bradford:

Q. Mr. Burwash, on these bids you receive from Indianapolis, what basis did they make?

A. They are bid so much track, as I understand it. Understand that I am not the manager of the elevator, but as a director, I know about how he handles his business.

Q. Isn't it true that those bids are generally based on an [fol. 1695] 18 cent freight rate to the Ohio River?

A. I would have to answer that, I understand that that is true.

Q. This one you spoke about going to Indianapolis or through Indianapolis to the distillers was all bought on the Ohio River basis?

A. Having seen some of the bids, I imagine it was, although they may have some other basis I don't know about.

Q. In that case, there was a market away from Chicago that attracted the grain through Indianapolis?

A. Yes, sir.

Q. Can you give me an estimate, that is the percentage of movement of your corn to Chicago, Decatur, Indianapolis and St. Louis during the past year?

A. I haven't those figures, no, sir. I can only say that that varies with different years. I have—we made a slight study of it in 1937 and it ran about one-third in each direction. That is the only figures I can give you.

Q. That is, one-third to the Southwest and one-third to Chicago?

A. And one-third to Indianapolis.

Q. And one-third to Indianapolis?

A. Yes, that was the way it ran in 1937.

Q. Do you think that Indianapolis could sell corn in New York at a different price than Chicago could sell it?

A. I know nothing about the rates, so I can't answer that.

Q. I am talking about price.

[fol. 1696] A. I don't know.

Q. You don't know?

A. No, I don't know anything about what Indianapolis can do that Chicago can't do.

Q. I am just asking could anybody, could you sell corn in New York at a different price than Chicago could sell. That is, could you sell at more than the man at New York could buy it from Chicago?

A. I don't know that they could. I do know this, that sometimes we can sell grain at Indianapolis at a different price than other people can, or sometimes we can sell grain at Chicago at a different price than other people can, because we happen to get a bid for a small lot that somebody

is willing to pay up for, and we do have a slight variation there, maybe a quarter or a half a cent. They will spring the market.

Q. Generally speaking, you can't sell corn in Chicago that is—I will put it this way. You couldn't sell corn in New York for more than your competitor was selling it. Generally speaking, that would be correct.

By Mr. Baxter:

Q. Do you get any bids from New York?

A. No, we don't get any bids; we know nothing about the New York market.

By Mr. Bradford:

Q. Ordinarily, they do sell corn in Chicago, your competitor at the next station; the same grade of corn?

A. They, of course, average up. I just stated there are [fol. 1697] times when due to a certain grade of corn being in demand and we happen to have it, we can spring the market.

Q. I am talking about the same grade and class of corn, you do sell your corn——

A. I have known it to happen in the same day.

Q. It wouldn't be a usual proposition?

A. No, but there are circumstances that always arise. There are no two people always put out the same bid in Chicago, that is what I am getting at. Some people are higher and some are lower, due to their outlets.

Q. If the dealer in corn at Chicago made a bid in New York on the 26 cent rate, your freight rate was 38 cents to New York, you believe that the man in the interior could pay up enough to meet that bid on the 26 cent rate from Chicago?

A. Our bid would be based entirely on the bid, less the cost back from the——

Q. I am talking about the man in the interior, such as Indianapolis, trying to buy your corn on the 38 cent rate to go to New York.

A. Well, I——

Mr. Baxter: He has testified he doesn't know how that grain is bought. He is offered a price on track. You are asking him a lot of differences in rates he says he doesn't know anything about.

Mr. Bradford: I am just asking him a simple question in [fol. 1698] arithmetic.

By Mr. Bradford:

Q. If it cost 38 cents to take corn direct from your station at New York, it costs 26 cents to take it from Chicago, wouldn't the price paid to you have to make up that difference? It is a very simple question.

A. I think this. In answer to that question, I wouldn't sell—I wouldn't be able to sell over a high rate in competition with the fellow that would be able to sell over a low rate. There would be two things that would happen. He would get a higher price for his corn and I would get a lower one. That is one reason and it extends to anybody shipping that has a natural advantage over me and I can't compete with it. I can't compete with the fellow that raises corn in Ohio on prices when it comes to going to New York, neither can I compete with the man east of me that gets a better freight rate, or any place else to New York. His corn will move first on that price. Maybe later I can get the price.

Mr. Bradford: That is all I have.

Exam. Taylor: Mr. Brown.

By Mr. Brown:

Q. Mr. Burwash, the record so far in this case shows that there was brought into Chicago by the Illinois Waterways in 1939, 13,206,000 bushels. The same record also shows that the Illinois Central Railroad, which serves you, brought into Chicago 13,813,000 bushels. Would you consider that both of those amounts or either one of them, take the water- [fol. 1699] way first, that amount of corn coming into the Chicago market in one year would have some effect on the price?

A. You mean in itself?

Q. Yes.

A. Of course, 13,000,000 is a mere drop in the bucket in the corn. The price of corn is based on the entire crop of corn wherever it is located, and that has more effect than when it comes in over a certain railroad or a certain way of getting in. I don't think the way corn arrives in Chicago has any effect. I think the amount of corn arriving is the thing that fixes the price of corn in Chicago, or the amount of corn available that can be brought in; not how it came in.

Q. And to other markets as well?

A. Yes.

Q. But if the effect of 13,000,000 bushels via the waterway, almost as much as the greatest amount brought in by any one railroad to Chicago, if it had the effect that you previously stated, that it sells for 3 cents more a bushel than you can get at Savoy, doesn't that have an effect?

A. Just a moment, I said it brought the farmer three cents more, not that it sold for any more in Chicago. It sold for the same price at Chicago and it didn't affect the difference in Chicago, whether that farmer back there got three cents less for his corn and paid it to the railroad for bringing it in; when it got into Chicago, it was all the same price.

[fol. 1700] Q. Then I understand that the price paid, the cash price paid in Chicago during 1939 was, to your knowledge, the same as the cash price paid for grain that came in by rail?

A. I don't pretend to have any knowledge of what was done on the Chicago market. I know this, that with the same billing privileges, corn will ordinarily sell within a small range in the same price the same instant on the market in Chicago.

Q. Perhaps you weren't here, but if you were here when Mr. Allen testified, didn't you hear him say that this rail grain, rail corn that comes in from these railroads tributary to the waterway, adjacent to the waterway, was discounted a half a cent to two and a half cents a bushel?

Mr. Root: Now, just a moment, Mr. Examiner. I wish he would state the rate on which that corn was shipped into Chicago.

Mr. Brown: I asked him if he heard it.

The Witness: No, sir, I didn't hear it.

By Mr. Brown:

Q. Now, supposing that 200,000 bushels comes into Chicago today and May futures are sold against that, what effect do you think that 200,000 coming in by water, what effect that would have on the May price?

A. The same effect that 200,000 bushels coming in by rail would have.

Q. It would have no other?

A. No other.

Q. But if it had a depressing effect because it was laid [fol. 1701] down in Chicago for a lower price, laid down for a lower price, wouldn't that affect your ability to put grain into Chicago?

A. I do not think that the manner in which the grain comes in, providing it has the same transportation privileges, has any effect on the price that corn brings in Chicago.

Q. Your theory is that if it all had the same price going out, it doesn't make any difference about the transportation costs coming in?

A. Except that that transportation cost is largely reflected back to the producer, because it is the producer that pays that transportation cost into Chicago.

Q. If 13,000,000 bushels comes into Chicago by waterway from points not on the water but spread out to territory 38 and 40 miles, and there is a saving to the producer, as you think, of 3 cents a bushel, doesn't that displace the grain that you might sell in Chicago?

A. Not one bit, because most of that grain has a natural advantage by water or by rail; and most of that territory, that grain would still come in ahead of mine by rail, because it has a lower freight rate than I have, and the water only enhances its advantage, which in no way affects my position.

Q. Now, Mr. Burwash, you said you didn't know anything about rates, but I am going to test them. Don't you have the same rate to St. Louis as you have to Chicago from Savoy?

A. Yes, sir.

[fol. 1702] Q. And you know it is 12 cents on 100 pounds?

A. Yes, sir, that is common knowledge.

Q. Would you accept my statement that points west of La Salle in the vicinity of the Illinois Waterway is higher than 12 cents to Chicago?

A. I will, but when you come into most of the grain, it is mostly this side of La Salle that comes up the Waterway.

Mr. Baxter: Mr. Brown, may I ask, away from the river, you mean?

Mr. Brown: Yes.

Mr. Baxter: Not from points that are trucking to the river?

Mr. Brown: Oh, yes, Sheffield, Annawan and all those places; Walnut, Mendota.

Mr. Baxter: A point that has a higher rate than 12 cents can still truck to the river?

Mr. Brown: Yes, because Mr. Burwash is in Illinois, where the St. Louis market may have an influence. He has an advantage.

The Witness: That is a natural advantage which I have as compared with some other people that are close to Chicago, and I just give credit to the river for the same thing. In other words, my price on corn is not fixed by what little corn may come from the Illinois River Valley. It is fixed by the entire crop all over these United States and the demand for it.

By Mr. Brown:

Q. Let's get a little closer to this. If there is 200,000 a day coming in by water to Chicago by barge and that is hedged in the next future, don't you think that has any [fol. 1703] effect on the futures price?

A. Not any more than 200,000 bushels coming in from any other direction, as long as it is hedged.

Q. If it is the greatest quantity that is coming into Chicago day after day, don't you say it does?

A. I would say that the effect of the hedges has nothing to do with where the corn comes from. If it didn't come from there and the demand was such, it would come from some place else and still be hedged.

Q. That is what I am saying. But it couldn't come from your particular territory as long as this movement continues and is in the volume it is today?

A. It couldn't, and it does at times come in competition with it, but we don't get quite as much money for it. We have to sell it at a little cheaper price. They have an advantage in transportation.

Q. In other words, because there is a difference in the charges up to Chicago?

A. Yes, that doesn't affect the price at Chicago any more. That corn would have to move some time, either by rail or water, if it was surplus corn. And the price I get for corn in Chicago is not affected by the means by which that corn reaches the market. It may reach it a little ahead of where it would otherwise, but that is all. It would still be out and thereby a depressing effect on the market, if you want to [fol. 1704] look at it that way.

Q. The reason I am a little tenacious about this point is because you said that formerly all your grain, not all of your grain but the bulk of your corn moved to Chicago.

A. Yes, sir.

Q. Now, we realize processors have come up, such as Decatur and——

A. Yes, General Foods and all.

Q. You ship to Kankakee?

A. White corn.

Q. Do you ship any white corn to Kankakee?

A. Yes, sometimes we do, once in a while. We are not very much of a white corn area; not over 40, 50,000 white corn.

Q. Let's say this: Is the effect at times of the futures market prices, no matter how they are made, lessening your chances to ship to Chicago when the barge grain is moving and giving you fewer markets bidding for your grain?

A. I don't think so, because when the barge movement is on, it takes that competition away from other points to which I am interested in hauling, like Decatur and perhaps the river territory down through Indianapolis.

Exam. Taylor: Just a minute. His counsel had to answer the telephone.

Mr. Brown: Yes.

Exam. Taylor: We will recess for five minute-.

[fol. 1705] (A short recess was taken.)

By Mr. Brown:

Q. Mr. Burwash——

Exam. Taylor: Just a minute. Go ahead.

By Mr. Brown:

Q. I believe you said you are president of the Illinois Grain Corporation?

A. I did, yes, sir.

Q. Is the Illinois Grain Corporation the lessee of the Farm Credit Administration of the elevator now operated by the Cooperative Allied Grain Dealers Association at Morris, Illinois?

A. Yes, sir.

Q. And that lease——

Mr. Belnap: You said the lessee, didn't you?

By Mr. Brown:

Q. He is the lessee of the Farm Credit Administration.

A. Yes, sir.

Q. Which took the elevator over from the Farmers National Grain Corporation?

A. That is correct.

Q. And you as president of the Illinois Grain Corporation, which leased it from the Farm Credit Administration, released it to the Allied Grain Corporation?

A. We did not re-lease it. We have an operating agreement with them. We did not re-lease it. It is merely an operating agreement with them.

Q. Between you and the Cooperative Allied Grain Deal-
[fol. 1706] ers Association?

A. Yes, sir, it is not strictly a lease.

Q. But you have leased it from the Farm Credit——

A. We lease it from the Farm Credit Administration, and instead of operating it ourselves, we have an operating agreement with the Cooperative Allied Grain Corporation.

Q. Cooperative Allied Grain Dealers Corporation?

A. Grain Corporation.

Mr. Baxter: In connection with that——

Mr. Brown: Wait just a minute.

Mr. Baxter: I just want to correct one thing.

Mr. Brown: Go ahead.

Mr. Baxter: You asked me when I was on the witness stand about this very thing, and Mr. Burwash can correct any misinformation I had. I told you that my information was rather meager, and this will straighten out what you asked me.

Mr. Brown: I didn't ask you about the connection of the Illinois Grain Corporation with this particular elevator, because it was stated in one of the protests what the arrangement was. I asked you about the membership of the Illinois Agricultural Association.

Mr. Baxter: You asked me about the Morris elevator.

Mr. Brown: Perhaps I did; I have forgotten.

By Mr. Brown:

Q. Well, now, under this operating agreement, what is the substance of it? What is the basis of it?

[fol. 1707] A. Is that necessary?

By Exam. Taylor:

Q. Is it in writing?
A. It is in writing, yes.

Mr. Baxter: Now, he has not testified, Mr. Examiner, for the Illinois Grain Corporation in this proceedings. He has qualified as a farmer and the vice president of the Savoy Cooperative Elevator Company.

Mr. Brown: But he strengthened all that by saying he was president of the Illinois Grain Corporation and was a member, some sort of member or officer of the Illinois Agricultural Association.

Mr. Baxter: Well, he is not qualified on this record as representing the Illinois Grain Corporation.

Mr. Brown: Well, if he is president, he ought to be qualified.

Mr. Baxter: He has no authority to represent the Illinois Grain Corporation in this proceeding.

Mr. Brown: Well, he is your witness and you are the Illinois Agricultural Association's representative.

Mr. Baxter: Yes.

Mr. Brown: And you brought him here as your representative.

Mr. Baxter: Yes, sir, but not as the Illinois Grain Corporation.

Mr. Enoch: May I make this suggestion, that I think this question is proper essentially, because he has already testi- [fol. 1708] fied the interest this man has in the outcome of this proceeding.

Exam. Taylor: The witness may answer. Do you want the question read?

The Witness: You may read the question, please.

Exam. Taylor: Read Mr. Brown's question.

(Question read.)

Mr. Baxter: I understand the Examiner asked if it was a written contract, and I don't think that question has been answered.

The Witness: It is a written contract, Mr. Examiner.

Mr. Brown: He said yes.

Mr. Belnap: Oh, I beg your pardon.

The Witness: Of course, I can give you in substance but I cannot give you the exact terms as written in the agree-

ment. I would have to have the agreement before me to do that.

Exam. Taylor: Mr. Brown only asked for the substance.

The Witness: The substance is this. We lease the elevator from Farm Credit for a stated sum and an amount per bushel of the grain that goes through it.

By Mr. Brown:

Q. A stated sum per annum?

A. Yes.

Q. And in addition, a certain amount for every bushel that goes through it?

A. That is right.

Q. That is in addition to the annual sum?

[fol. 1709] A. Yes, sir.

Q. All right.

A. Then our agreement with the Cooperative Allied Grain Company is that they pay us the amount that we pay Farm Credit, plus a certain amount per bushel on all the grain that goes through.

Q. In other words, the Allied Grain Dealers reimburse you for the per bushel amount that you pay the Federal Farm Credit?

A. Yes, sir, and in addition to that an additional amount per bushel.

Q. Per bushel?

A. Yes, that varies on different grains and so forth.

Q. But it leaves you some money over and above what you would pay on the per bushel basis to the Federal Farm Credit?

A. It did last year, yes.

Q. In other words, the amount you receive per bushel, varying in amount according to the grain, is greater than you pay the Federal Farm Credit on the bushel basis?

A. It was last year.

Q. Now, about the annual lease, which is separate from the bushel arrangement, how are you reimbursed for that?

A. They pay that.

Q. Oh, the Allied?

A. Yes, as I stated, they pay us the exact amount that we pay Farm Credit plus—that includes both the annual amount plus an amount per bushel.

[fol. 1710] Q. In other words, they reimburse you for all you pay the Farm Credit and you get your profit on a bushel basis?

A. Yes, sir, that is it.

Q. When was that lease executed? When did this agreemeent take effect?

A. It took effect about June, 1938.

Q. Is the settlement on a gross basis or a calendar basis?

A. Monthly basis.

Q. Monthly basis?

A. Yes.

Q. Well, have there been any months since the agreement was taken on which you received no money, no profit?

A. I cannot answer that. We operate two elevators in that manner, and I know one of them, at least, there are months go by that we don't get anything, they don't handle grain. As far as—no, there hasn't been any month we have not received anything.

Q. I am talking about the Allied Grain Dealers.

A. Yes.

Q. That is the only one with which you have got an agreement, the Morris elevator you have got an agreement with, the Cooperative Allied Grain Dealers?

A. Yes.

Q. This other one has got nothing to do with that?

A. No.

[fol. 1711] Exam. Taylor: Any further cross examination of this witness? Anything on redirect?

Mr. Belnap: I have a question.

Exam. Taylor: Mr. Belnap.

Redirect examination.

By Mr. Belnap:

Q. What is the Illinois Grain Corporation, Mr. Burwash?

A. The Illinois Grain Corporation is a corporation organized to handle grain either on a commission basis, or otherwise, in the State of Illinois.

Q. Who owns it?

A. It is owned by members of the—by farmers' elevators who own about 50 per cent of the stock and by the Illinois Agricultural Association, which owns about 35 per cent of

the stock, and by various farm bureaus in the state, which own about 15 per cent of the stock.

Q. Is that ownership scattered throughout the length and breadth of the state?

A. Yes, sir, entirely covers the grain territory in the state.

Q. Do you personally have any financial interest in the Illinois Grain Corporation?

A. No, sir, not one penny. No individual has.

Q. Would you personally benefit if it was profitable?

A. Only to the extent that it might help me, as an individual, to dispose of my crops, if they could be of any par-
[fol. 1712] ticular benefit directly back through the elevators. We have a set-up so that our profits can be distributed back to the individual growers who work through the member elevators, and they, in turn, through Illinois Grain.

Q. Has the Illinois Grain Corporation handled any of your grain on a commission basis?

A. It was not my grain when they handled it. It was owned by the local elevator and sold as their grain. No, sir, it doesn't handle grain for individuals to any great extent.

Q. Take up the local elevator at Fisher.

A. Yes.

Q. Has the Illinois Grain Corporation—is that the name?

A. Yes, sir.

Q. Has that handled the grain, purchased grain, or handled grain for the elevator on a commission basis?

A. Yes, sir.

Q. To what extent?

A. About one-third of their volume goes through Illinois Grain, of the elevator volume.

Q. Has some of the grain that is so handled been sold to the Indianapolis market?

A. Yes, sir, largely that way.

Q. Has that grain been hedged on the Chicago market by Illinois Grain?

A. Yes, sir.

[fol. 1713] Q. As far as hedging has an effect on the futures, it has the same effect even if the grain goes to Indianapolis, is that correct?

A. Yes, sir, this grain, I happen to know as president of Illinois Grain, that we largely hedge for the people who

buy this grain from us and move it from Indianapolis and I know they hedge it in Chicago.

Mr. Belnap: That is all.

Exam. Taylor: Does that bring up anything further? Is that all from this witness? (No response.) The witness is excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Root: Mr. George Mellen.

G. E. Mellen, was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. State your name, please.

A. G. E. Mellen.

Q. Where do you reside, Mr. Mellen?

A. Mazon, Illinois.

Q. In the village of Mazon, or near Mazon?

A. About two and a half miles south of Mazon.

Q. On a farm?

A. On a farm.

[fol. 1714] Q. Mr. Mellen, you are familiar with the issues in this case, that is, in a general way at least? You have heard lots of this testimony?

A. I just am familiar with the farming and elevator end of it, Mr. Root, as far as I would be concerned.

Q. Do you feel that you have an interest in this case?

A. Definitely.

Q. Have you prepared a statement which you would like to make for the record?

A. I have, if you please, Mr. Root.

Q. Will you proceed to make it.

By Exam. Taylor:

Q. Before you proceed, would you mind stating where Mazon is?

A. Why, certainly. Mazon is located on the Santa Fe about 70 miles west of Chicago.

Mr. Root: Northwest.

By Exam. Taylor:

Q. In what county?

A. In Grundy County, Mr. Examiner.

Q. How far is it from Morris?

A. Ten miles south of Morris. Something over 23 years ago I started in the grain business in Mazon. I have been actively engaged in that line of work since that time. I live on a 240 acre farm which I own which is located two and a half miles south of Mazon on Route 47. I spend a certain portion of my time in actively watching operations on my [fol. 1715] farm. I mention this factor as a little later I expect to show the advantage to me as a land owner of waterway transportation. I am going to attempt to point out my personal experiences as well as the observations I have gathered in my office as to the experiences of other farmers in the Illinois Valley.

At the time I started in the grain business 23 years ago we had a 5 cent I. P. rate on all kinds of grain to Chicago. A little quick subtraction will show you this was in the year 1916. We enjoyed this rate for a year or so when the Santa Fe raised the rate to a 9½ cent I. P. No one would question at that time but what they were justified in raising this rate. General maintenance costs together with higher labor at this time made such an action necessary. Again, farmers didn't object as they were getting the highest prices in American history for the products of their farms. Figuring transportation costs as against the price the farmer was receiving for his products, we find that a farmer could ship 35 or 40 bushels of corn to Chicago for the price he was receiving for one bushel on the market.

The war ended and the price of farm products declined seriously. They declined so badly that it was costing the farmer one bushel of corn to move 3 or 4 bushels to the Chicago market. It doesn't take much of an imagination to realize that a 9½ cent per hundred freight rate on corn selling in Chicago at less than 40 cents for a hundred [fol. 1716] pounds, which would net less than 20 cents per bushel is confiscatory.

By Mr. Day:

Q. Now, Mr. Mellen, will you fix the time or period that you are talking about?

A. Which period do you mean, now?
Q. The one you are talking about.
A. I believe I started back, Mr. Day, and said——
Q. You said after the war.
A. Yes, let's get up——
Q. That the price per bushel of corn would be one bushel out of three or four bushels to Chicago. What time do you mean that it cost that?
A. '32, we will say.
Q. That long after the war?
A. Yes.
Q. Fourteen years after the war ended?
A. That is right, the rates were still the same, Mr. Day.

By Mr. Root:

Q. Will you proceed with your statement, Mr. Mellen.
A. No industry can afford to take 25 per cent of the total of their proceeds for the use of a box car to move their grain less than 70 miles from Mazon to Chicago.

A man, with very little capital, saw an opportunity to engaged in the grain business on the Illinois Waterway in Morris. I suppose I had better set a time.

Q. That is right, go on ahead and we will anticipate Mr. Day.

[fol. 1717] A. 1934. A very modest start was made by the erection of a small elevator and from this modest start many more elevators have been built on the Illinois Waterway.

After considerable time had elapsed the railroads did reduce their rates in the Illinois Valley. Their first experiment in the way of a reduction on the Santa Fe gave us a 7 cent lake local rate. Let's see, that was about 1935.

Q. 1935?

A. I would say. However, when navigation closed the rate was immediately raised to its former level. As a result of this action of cancelling the rate while the river was closed many farmers could see that they never would have had a cut had it not been for the lower river rates. A very natural result was, that more of our farmers were demanding that their grain be moved by water.

In the case we are discussing here today we find that certain interests would like to see privileges enjoyed by the waterway taken away. They do not have anything to offer

the farmers of the Illinois Valley that will take the place of these privileges.

The Illinois Valley farmer, in the estimation of well informed people, is going to object to any such action. I base my statement upon the fact that thousands of Illinois Valley farmers have signed a petition to the members of Congress asking that these privileges be maintained. The farmers' [fol. 1718] attitude is, why destroy something that is workable, economically sound and in which millions of dollars of the taxpayers' money have been spent. The thought I have been trying to convey——

By Mr. Enoch:

Q. You mean the taxpayers in the Illinois Valley, or throughout the United States?

A. My understanding was originally there was a bond issue of the State of Illinois which has since been retired.

By Mr. Root:

Q. That $20,000,000 bond issue, Mr. Mellen?

A. $20,000,000 as I understand it.

By Mr. Enoch:

Q. Is that what built the Illinois Waterway?

A. The Illinois Waterway was placed there by nature, of course, but it was improved by that bond issue.

Q. Does that constitute the total improvement?

A. I wouldn't know. The thought that I have been trying to convey is, that rail rates were confiscatory when the waterway was opened for navigation at Morris, Illinois. Farmer prices were exceedingly low. Waterway transportation became available to the farmers of the Illinois Valley. The waterway is here, placed here by nature and improved by the taxpayers. Our farmers feel it should be used and they resent anything that will take away from them this cheaper method of handling their crops until such time as a better method is found.

By Mr. Root:

Q. Mr. Mellen, I believe you stated you were the manager of the Mazon Farmers Elevator Company?

A. President or manager, Mr. Root.

[fol. 1719] Q. That is Cooperative?

A. Yes, sir.

Q. About how many bushels of grain do you handle through that elevator each year?

A. About 700,000 bushels.

Q. And that is the average, sometimes more or less, depending on the crop?

A. That is the mean average.

Q. From your experience as an elevator operator and farmer, what price advantage, if any, do you believe the farmers in your locality gain by reason of having their grain moved over the Illinois Waterway rather than by rail?

Mr. Enoch: I object to that, unless he can cite specific instances. He is a man that is buying corn; he ought to tell us how much he paid the farmer, when he paid it, and to whom he paid it.

Mr. Root: Just a minute, Mr. Enoch. He was just pulling that out of his pocket, the specific example.

By Mr. Root:

Q. Will you proceed to give the specific example, Mr. Mellen, that Mr. Enoch asked about.

A. It wouldn't have been at all difficult to have made out hundreds of cases such as I have here at the present time, up to date. I mean by that, within a reasonable time of the hearing. I have used the dates of December 1, 1939, December 7th, December 16th and in each instance, have [fol. 1720] named the man's name from whom we purchased the corn, his address——

Q. Proceed to give that example.

A. Yes. On December 1, 1939, we purchased and delivered to the river 916 bushels of corn——

Q. When you say the river, will you say where on the river?

A. At Morris.

Q. Allied Grain?

A. Allied Grain. From the farm at William Morris, R. F. D., Morris, Illinois, and his farm is located five and a half miles south of Morris, Illinois; and on that particular day, the lake bid net Chicago, after the close of the market, was 52.5.

By Exam. Taylor:

Q. Cents?

A. I beg your pardon?

Q. Cents?

A. Yes.

By Mr. Root:

Q. Cents per bushel?

A. Yes.

Q. And all of these figures you are going to give will be cents per bushel, Mr. Mellen?

A. That is right. Freight at 5½ cents per hundred would be 3.2, leaving 49.3. Less weighing and inspection of a quarter of a cent, would leave 49.1. In our territory we furnish trucks exclusively for hauling the grain——

Q. In other words, your bids are F. O. B. the farm?

A. F. O. B. the farm. So we have a 1 cent hauling charge [fol. 1721] to the river, which brings that down to 48.1, and we deduct a local elevator profit of 2 cents, and we have a result of 46.1 that we would have bid this farmer, using our 5½ lake local rate.

Q. Now, Mr. Mellen, you said in that case there was a 1 cent trucking charge from the farm to the river. Do you mean from the farm to the river, or the farm to your elevator, to ship by rail?

A. Farm to the river.

Q. I mean, have you taken a different example. You were going to send it by rail.

A. Yes, excuse me. It would be farm to the elevator in that case, but in both cases the charges are the same.

Q. I just want it straightened out in the record.

A. On that particular day, our river bid, after the close, was 50.5 cents, and we have the same trucking charge of 1 cent to get to Morris, leaves us 49.5, less our local elevator profit of 1 cent, in this particular case, would leave 48.5 or 48.2 cents, the exact figure that we paid the farmer that day.

Q. Mr. Mellen, will you explain right here why you only take, deduct 1 cent for your local elevator profit in a case of selling to the Allied Grain on the river, whereas you deduct 2 cents if you are going to ship to Chicago by rail?

A. In the case of our sending the grain direct to the river, it leaves the farm and goes down to the elevator and we

[fol. 1722] have no elevation expenses against it whatsoever. And in a case where it would be taken by rail, we naturally would have elevation and shrinkage that we would have to consider.

I would like to carry the illustration just a little——

Q. Proceed, I just wanted to clear it up at that point in the record.

A. Certainly. I would like to carry the illustration just a little bit further and use the I. P. rate, and the bid on the I. P. that particular day was 53.1.

Q. What is the I. P. rate?

A. Our proportional rate to Chicago, which is 9½ cents or 10 cents. I beg your pardon.

By Mr. Enoch:

Q. Whose bid?

A. This is what I got over the radio; a board bid, I suppose it is called. It is put out daily by the board. I don't know who makes it or where it emanates from.

By Mr. Brown:

Q. That was during the session?

A. After the close.

Q. Call bid?

A. I wouldn't know. That was the Illinois Proportional bid, was 53.1. On a 10 cent I. P. rate, we have 5.6 freight expense, less a quarter of a cent weighing and inspection, less a 1 cent trucking charge, again less a 2 cent elevator profit, and on a 10 cent I. P. rate, we could have paid the same farmer 44.1.

Now, taking the average sales prices for that particular [fol. 1723] day, the cash sales prices for corn that particular day, we found that we had an average of 54.7. Now, we would have the—we are going to have a lake rate in this particular case and we are going to sell this average sale corn on the lake rate of 5½ cents higher, an expense of freight of 3.2, less a cent commission in Chicago, less a quarter of a cent for inspection ad weighing, less the regular charge of 1 cent for hauling, less the local elevator's 2 cent profit, and we find that if we had used the average cash sale price for the day, we would have paid the farmer 47.3 cents, using the lake rate in that case.

Just to get the record straight on the figures that I have been going through here, on a 5½ cent rate we could have paid 46.1. Our river bid permitted us to pay him 48½ cents. A 10 cent I. P. bid would have permitted us to pay him 44.1, and the average cash price sales for the day of 47.3.

By Mr. Root:

Q. As I understand, then, from that exhibit, Mr. Mellen, you actually paid this particular gentleman on that purchase 2.4 cents per bushel more for his corn as a result of selling it to the—for shipment over the Illinois Waterway than you could have over the cheapest form—than you could have, had it been sold and shipped by rail at the cheapest rate then available?

A. Well, that would have applied, Mr. Root, as against the 5½ cent lake rate, as against the river price.

[fol. 1724] Q. How much was that 5½ cent lake?

A. It would have been 2½ cents in that case.

Q. I thought it was 2.4?

A. Well, 2.4., yes.

Q. That is what I mean. In other words, the farmer had 2.4 cents a bushel more?

A. Yes.

Q. Now, Mr. Mellen, just to save time, I know that you have a number of other examples there. Is it a fact that you, from your records, could repeat illustration after illustration showing specific purchases and dates and where the benefit accruing to the farmer was absoutely the same as this example just given?

A. If it would be of any benefit to the records, we could have built them up for thousands of bushels of grain.

Q. And you are just giving this as one representative example?

A. Well, I have three. It isn't necessary to go into them.

Q. Well, our time is short this morning.

Mr. Enoch: Just looking over these, do you think that you are justified in relying on that statement?

Exam. Taylor: As representative?

Mr. Root: I think so. I am familiar with these elevator men. I know as a practical matter the farmers are getting more.

Mr. Enoch: That is not right. You are asking this witness if it is typical, and I am perfectly willing, if you [fol. 1725] say it is typical and you say you are informed, to accept it, as far as I am concerned.

Mr. Root: Let me say this. I have known Mr. George Mellen for many years, and if George Mellen says he takes this from the books, I would rely on what he tells me.

Mr. Enoch: I thought you had gone over them.

Mr. Root: I have never gone over the elevator books, if that is what you mean. I have gone over this example. I will vouch for Mr. Mellen's integrity.

By Mr. Root:

Q. Mr. Mellen, over what area, approximately, does the elevator of which you are president and manager purchase grain?

A. Very largely Mazon Township.

Q. And that is a Congressional Township, six miles square?

A. That is right.

Q. As a matter of fact, the Village of Mazon is almost in the geographical center?

A. Practically.

Q. Do you know how many farming units there are in that territory and by farming units I mean the number of different farms that are operated in that township?

A. It just happens——

Q. Yes or no, do you know?

A. Yes, approximately.

Q. What is the number of those units?

[fol. 1726] A. About 130.

Q. Will you state where you acquired that information?

A. Through the conservation office.

Q. Do you mean the——

A. Soil Improvement Conservation Office.

Q. The branch of the United States Department of Agrituleure?

A. That is right.

Q. Which maintains a county office in Morris?

A. That is right.

Q. As a matter of fact, they have taken aerial maps of the Township, and they have them all marked out?

A. That is right.

Q. Have you made any computation based on the 700,000 bushels, average annual purchases made by your elevator, what that saving would be, and dividing it among these 130 units to show what the annual amount is per unit that they get more by reason of the water transportation?

A. Well, assuming that the elevator handles approximately 700,000 bushels of grain, and from innumerable examples that I have tested throughout the past five years, assuming that there is even an advantage of 2 cents per bushel, it would leave $10,000 per year in our territory, and assuming that the river has been open for five years, and we have $50,000 saving to our farmers in transportation costs, and taking the Conservation Office statement that [fol. 1727] there are approximately 130 farming units in our Township, it represents a saving to each individual farmer of approximately, each unit, I should say, instead of each farmer——

Q. Each unit may include landlord and tenant?

A. Yes, sir.

Mr. Brown: Off the record.

(Discussion outside the record.)

By Mr. Root:

Q. Will you complete the statement, for each unit?

A. Assuming that there would be a saving of $50,000 and there were 130 units, it means each unit would have been saved about $400 in transportation cost.

Q. Over the period of the last five years?

A. That is right.

Q. Does the Mazon Farmers Elevator have any association or connection with any commission firm or grain company?

A. Absolutely not.

Q. They are a member of the Allied group?

A. Yes.

Q. But they are not associated or connected with any commission firm in Chicago or elsewhere?

A. We do not have any association with them, affiliated or do not owe any commission company a single dime.

Q. In the past, has your company ever owed money to commission houses in Chicago?

[fol. 1728] A. Like about all private and——

Q. Have they, yes or no?

A. Yes.

Q. State the reason why it was necessary to borrow that money.

A. I am perfectly safe in saying that it wasn't a practice of any cooperative concern—all companies during the high-pressure movements would get scarce of money to pay their farmers instantly.

Q. Elaborate on that a little bit.

A. With the result that in the days that have gone by, I think practically every grain company more or less used certain commission companies as a sort of a bank for a temporary loan; and probably one of the outstanding reasons that we don't have occasion to do that any more is due to the fact that we move the corn from the farm to the river and the following morning the check that is sent over is in our office.

Mr. Root: I believe that is all I care to ask.

Exam. Taylor: Any questions by counsel for protestants? Cross-examine.

Cross-examination.

By Mr. Enoch:

Q. This isn't your first appearance in cases of this kind, is it?

A. No, sir.

Q. Have you been a witness for Mr. Belnap in other cases?

A. I came in for Mr. Belnap? Was I your witness?

[fol. 1729] Mr. Belnap: Yes.

The Witnes: Yes, I was. I didn't know who I was a witness for.

By Mr. Enoch:

Q. Do you remember what that case was about? Was that an issue similar to this?

A. I wouldn't have any idea. I was simply there as a farmer, just simply testifying——

Q. That was a case that was held down at Memphis, wasn't it?

A. That is right.

Q. And the rates out of Memphis into the Southeast were involved?

A. Yes, sir.

Q. And you took about the same position in that case that you just have taken here?

A. That is right.

Q. Now, will you tell me, if you can, what you paid to William Morris in dollars and cents for his 916 bushels of corn, and when I ask you that, I want you to ignore how you arrived at your bid, how you arrived at your price. Just tell me what you paid him. Have you got a record of what you paid him?

A. You know, I would have been very happy to substantiate my statement of what we paid this gentleman, but it happens that we, in our elevator, sell lumber, coal and all those kind of things, and it just happened this man owed us an account of $28 or $30; otherwise, I would have brought [fol. 1730] the cancelled check, would have verified my statement there.

Q. Now, you had another example there on the 7th?

A. Yes, sir.

Q. What was the name of that man?

A. The man on the 7th was Mr. Harry Grieff.

Q. Can you tell us what was actually paid to him?

A. On that day, we gave him 50 cents.

Q. 50 cents?

A. Yes.

By Mr. Root:

Q. 50 cents a bushel, you mean?

A. 50 cents a bushel.

By Mr. Enoch:

Q. Was that the bid to him?

A. That was what we paid him.

Q. You paid him 50 cents?

A. Yes.

Q. He got the full 50 cents, regardless of the kind of corn that he gave to you?

A. Well, he got it for No. 2 corn.

Q. What was his corn?

A. No. 2.

Q. And you are testifying now that this gentleman with whom you dealt on the 7th of December, 1939, got this price?

A. Yes, sir.

Q. 50 cents a bushel?

A. 50 cents.

[fol. 1731] Q. Now, on December 16th.

A. Yes, sir. December 16th, Mr. Chapin Weed—and by the way, his home is in Chicago; Plaza Place.

Q. Don't misunderstand me. I am not questioning your statement.

A. I know.

Q. But I want you to understand that I am not inquiring about the manner in which you arrived at the price or your bid. I want to know how much money per bushel each one of those men received on their corn.

A. On December 15th, we paid Mr. Weed, 52 cents.

By Mr. Root:

Q. What grade of corn was that?

A. All No. 2.

By Mr. Enoch:

Q. If he gave you No. 3 or No. 4, do you know whether you received No. 3 or No. 4 on a 52 cent bid?

A. Let me answer that just in a general way. All our corn is No. 2. We have had no exceptions.

By Mr. Root:

Q. You mean this year?

A. This year, yes.

By Mr. Enoch:

Q. In these last two instances, were these men also indebted to you?

A. They were, yes.

Mr. Enoch: That is all I have.

Mr. Root: Mr. Mellen, isn't it—oh, pardon me.

Mr. Cole: Go ahead.

Exam. Taylor: Mr. Bradford? Mr. Brown?

[fol. 1732] Mr. Brown: Yes.

By Mr. Brown:

Q. Mr. Mellen, isn't your company a member of the Illinois Grain Corporation?

A. Yes, sir.

Q. Would you say that quite generally, over your experience of the last two years or going back further than that if you care to, that when you had a lake rate, lake local rate of 5½ cents, that the difference in the net return to the farmer as against what he gets on shipments that you have when taken over to the river would be 2.4 a bushel?

A. I wouldn't say that.

Q. It wouldn't average that, you don't think?

A. I wouldn't say that.

Q. Of course, you have only cited one case and I don't care to have you cite any others, but I want to get about what the average would be to take any one season. Now, that is between what the farmer gets when he delivers to the river elevator and what he would get when he delivers to your elevator and you ship to Chicago on the lake local which, this year, is 5½ cents per hundred pounds. You made that contrast, didn't you?

A. Yes.

Mr. Root: Just a minute, let me correct you there. You say he delivers it. His testimony was he bought F. O. B. the farm. The farmer does not deliver in any case.

Mr. Brown: It is delivered to the river elevator.

[fol. 1733] Mr. Root: Yes, but I just want to get this straight. This man paid the transportation, which is an item of a cent a bushel.

Mr. Brown: Yes, it says here 50½ and 1 cent off, 49½, and the farmer gets 48½. That is what I am getting at, is what the difference is between what the farmer gets, according to Mr. Mellen's figures, under these two modes of transportation. I just want to get the general average, whether it is 2.4 or 2.3 or whatever it is.

The Witness: I wouldn't be able to say.

By Mr. Brown:

Q. Would it be as low as 2 cents on the average in 1939?

A. It would be purely a speculative answer on my part, Mr. Brown.

Q. Well, then, would you say this, that this illustration of

2.4 isn't representative of what happened in 1939 in the difference of prices to the farmer?

A. I tell you, Mr. Brown, let's answer in a back way, you might say. Every grain man seeks the highest price for his farmers' product. And the fact that the grain from the Mazon elevator, almost without exception moved to the river, proved that there was a profitable advantage to the farmer to move his grain to the river as against a 5½ cent lake local rate.

Q. Yes. I agree with you in that. I think that is true; that grain could be delivered to Chicago at cheaper cost and [fol. 1734] would result in a higher price to the farmer than if it went by rail at the lake local rate. What I have heard here about the discounts on the lake local rate—But if you can't say that this 2.4 that you used is typical, why did you use it, why do you bring it in here?

By Mr. Root:

Q. Do you understand what he is driving at here, Mr. Mellen?

A. I think I do, Mr. Root.

Mr. Root: Apparently the witness is confused. He has testified on this directly——

By Mr. Brown:

Q. You testified that the difference would be 2.4, using the two modes of transportation. Now, why do you bring that in here and show it to the Commission if you didn't mean that was what the farmer got more when he went by water than when he went by the lake local rate?

A. That is exactly what I did want the Commission to understand; in the cases I cited here, that is what I would like to show here.

Q. This one man?

A. Yes, sir, but as far as over a period of years that he did or didn't, I wouldn't care to go on the record to that effect.

Q. All right, then, we will pass that up. But on this particular case where these rates were used, you wouldn't say it is 2.4 more or any other amount that the farmer gets when he goes by barge than when he goes by rail?

[fol. 1735] A. The cases I am citing are specific cases. I say he did receive those advantages.

Q. All right, you use another illustration. I am not questioning whether 2.4 is right or wrong, but I want to know whether that is about the general average.

A. Yes, sir.

Q. We will pass that up. Now, you use another illustration that if the I. P. rate had been used on a bid that was delivered at Chicago, 53.1 cents per bushel——

By Mr. Root:

Q. What is the date of that?

A. December 1st.

By Mr. Brown:

Q. The net result to the farmer would have been 44.1 cents per bushel. Now, that was 4.4 per bushel less than you received in your first illustration?

A. That is right.

Q. So we get down to about this, that it is 2.4 when you use the lake local and it is about as much as 4.4 cents per bushel if the I. P. rate is charged?

A. Yes.

Q. Now, you shipped grain by rail to Chicago many times, haven't you?

A. Millions of bushels.

Q. Well, when you shipped grain to Chicago by rail and after you got your returns and got your money for it, did you know what happened to that grain?

[fol. 1736] A. Why, the assumption, of course, would be that somebody eventually is going to eat it up; get it out of the way.

Q. I presume so. But, do you know what happened to it in the way of transportation out of Chicago after you get your money?

A. I wouldn't have the slightest idea.

Q. Do you actually know today, when grain is delivered by you or for your account at the waterfront elevator in Morris, what happens to it there?

A. I wouldn't have the slightest idea.

Mr. Brown: That is all I have got.

Exam. Taylor: Any further cross examination? Anything on redirect?

Mr. Brown: Oh, just one more question, if you please; I overlooked this. It is a little past history.

By Mr. Brown:

Q. Mr. Mellen, you remember that you were present at a public hearing on September 1, 1939, before the Central Freight Association Executive Committee where we were discussing this very thing, the question of the cancellation of these reshipping rates on barge grain.

A. Tell me what happened. It seems very vague to me.

Q. Do you remember you were there?

A. If you tell me something that happened, it will probably bring it back to my mind.

Q. I believe that you got up and spoke a couple of times, and one time you said that the grain, even if these rates [fol. 1737] were cancelled, the grain would still go by barge to Chicago.

A. Did I say that, Mr. Brown?

Q. You did.

A. If I said it, that is the answer; I must have said it.

Q. I want to know if you——

A. Let's not delete it from the great statement I must have made.

Q. It wasn't a great statement. Let's get to this: You made that statement. You admit you made that statement, the grain would still move by barge even if those rates were cancelled out?

A. Don't you imagine I must have said something to qualify that, ahead or back of it? I certainly wouldn't make a bald statement like that, Mr. Brown.

Q. You did. I am asking you now if these reshipping rates are cancelled out from Chicago to the East, do you still think that grain will move by barge from Morris to Chicago that is grown in your vicinity?

A. Yes.

Exam. Taylor: Is that all? Anything on redirect?

Redirect examination.

By Mr. Root:

Q. Mr. Mellen, isn't it a common practice of country elevators to advance money on materials to your customers?

A. Quite definitely.

[fols. 1738-1740] Q. The deductions you made from the

customers were simply squaring up their accounts when they brought in the grain?

A. That is right.

Mr. Root: That is all.

Exam. Taylor: Is that all from this witness? Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Root: That is all the witnesses I have, your Honor.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: We will adjourn at this time until nine o'clock Monday morning, January 22, 1940.

(At 12:05 o'clock P. M., Saturday, January 20, 1940, adjournment taken to 9:00 o'clock A. M., Monday January 22, 1940.)

[fol. 1741]

Morrison Hotel,
Chicago, Illinois,
Monday, January 22, 1940.

Before R. G. Taylor, Examiner

Hearing resumed at 9:00 o'clock a. m.

Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right, gentlemen, come to order. Mr. Macaulay, will you put on your first witness.

Mr. Macaulay: Mr. Finnegan. Will you distribute your——

Exam. Taylor: Do you have some exhibits?

Mr. Macaulay: No, just a statement.

JAMES F. FINNEGAN, was sworn and testified as follows:

Direct examination.

By Mr. Macaulay:

Q. Will you state your name?

A. My name is James F. Finnegan.

Q. Where do you reside?

A. I reside in Morris, Illinois.

Q. Are you in the grain business?

A. I am the president and operator of the Finnegan Grain Corporation and of the Finnegan Elevator Company.

Exam. Taylor: Is that incorporated?

[fol. 1742] Mr. Macaulay: The Finnegan Grain Corporation.

By Mr. Macaulay:

Q. Where are you engaged in business?

A. In Patonville, Illinois, and in Morris, Illinois.

Q. And what is your previous experience in the grain business?

A. Well, I was in the grain business with my dad, a little place by the name of Blair, east of Dwight, since I was a boy. I was in business for myself at Wauponsee Station and I have been in business in Morris five and a half, six years on the river.

Q. Do you wish to make a statement for the record?

A. I do. In 1933 when it became apparent that the Illinois Waterway would soon be completed for navigation, I began the planning for the construction of a river elevator and in 1934 I completed the construction of my river elevator on the south bank of the Illinois River near the unincorporated village of Patonville across the river from Morris. After I had finished construction, the Farmers National Grain Corporation started to build a river elevator on the north bank of the river in the city of Morris. This elevator is now sub-leased to the Cooperative Allied Grain Dealers Corporation. My river elevator has a capacity of between 20,000 and 25,000 bushels. I operate as an independent grain dealer. None of the stock of either of my companies is owned either directly or indirectly by any other grain dealer or any commission man.

There was no established barge service on the river at [fol. 1743] the time I commenced the construction of my elevator. However, shortly after I completed construction the Federal Barge Lines provided a service both to Chicago and to the South and a Captain Black started an independent barge operation. As I recall it the Federal made a charge to Chicago of 4 cents per hundred which charge has since been raised to 6½ cents per hundred which is higher than the rates charged now by other barge line operators.

Because of the volume of grain necessary to fill a barge as compared with a freight car it was apparent that I couldn't rely on the old established practice of having grain brought to the elevator by wagon. If the elevator was to succeed it would be necessary to have a large volume and this required that the handling of grain from the farm would have to be revolutionized around Morris. Instead of having the grain shelled by the farm ring and taken by wagon to the local elevator and then transported to the river, I established the practice around Morris with the local elevator operator to buy the grain on the farm with weights and grades to be determined by my elevator at Morris. Either the local elevator operator or I would then arrange for a power sheller and trucks to be sent to the farm. The grain would then be brought direct to my river elevator where it would be weighed and graded and paid for. The farmer was relieved of a great amount of work, the local elevator operator was able to make a charge for [fol. 1744] his service without the trouble and expense of running the grain through his house, or financing the grain and was relieved of some speculation in finding a market for the grain. He was given an additional competitive market which was nearer home.

River elevator sites are not plentiful. It is necessary to have the elevator located on ground that is well above the high water mark and is accessible to the hard roads. The site where my river elevator now stands is on the stub end of a road which ends at the Illinois River and is on fairly high ground and has no rail connection and necessarily therefore has no through rail rate. The nearest railroad on my side of the river is the Santa Fe which is about ten miles south through Mazon, Illinois. At the time the site was selected, there was no apparent need for a rail connection because of the then provisions of the rail tariffs relative to grain arriving in Chicago by water and I was assured that the grain shipped by me by barge to Chicago would not be discounted by reason thereof.

When the Morris Grain and Seed Company went out of business in 1938 I was asked to lease its two elevators, one of which is located a few minutes north of Morris without any rail connection and the other is located at Morris, Illinois on the Rock Island. This lease is on a year to year basis. In 1939 in order to assist in the storing of government loan grain, I leased an elevator at Central, Illinois,

[fol. 1745] which does not have any rail connection. This lease is also on a year to year basis.

Most of my grain is now shipped over the Mechling Barge Lines. Neither I nor the Finnegan Grain Corporation or anyone associated or related to me or my companies have any interest whatever in the Mechling Barge Line or any barges or any towboats. I am entirely dependent on the various river transportation companies for the handling of my grain. I have no contract or understanding whatsoever with any barge line for their exclusive service or for service at a lower cost to me than to others.

The countryside around Morris produces an excess mostly of corn, and that is why my greatest volume of grain handled is corn. An increasingly large amount of soybeans are being produced in this area and are being handled by me. There is also a quantity of oats and wheat. I will quote prices and make a market for all grains.

Substantially all grain I buy is bought through the local country elevator.

By Exam. Taylor:

Q. Just a minute. Have you got an extra copy of that?

A. I have.

Q. Will you give it to Mr. Enoch so he can follow it?

A. Yes, sir. In this way I can secure a larger volume than would be possible if I bought direct from the farmer. [fol. 1746] The elevator operator is acquainted with the farmers and farm owners of his community and is better able than I am to know whether there are any liens or claims against the grain. By doing this I am able to deal directly with a relatively few persons which would not be the case if I dealt directly with the farmer. I need the local elevator operator and he needs me. There are a few instances where farmers have a large volume of grain and I buy it direct but these are rare. Other instances where I buy direct are where all the local elevators in a town are members and stockholders of Cooperative Allied Grain Corporation and do not sell me what I think a fair amount of grain, or where a particular elevator or elevators are taking too long a margin for themselves or where they do not accept any river bids even though the river bid is considerably higher than the rail bids, thereby not giving the farmer as much as he should be getting. However, the local

elevator operator need never fear that I will put him out of business if he will but sell me a fair amount of the grain from his territory if my price is as high as he can obtain elsewhere.

I firmly believe that the river elevators have enabled the local elevators to continue in business with less overhead. Before I commenced business in Patonville an increasingly large amount of grain was being bought in their territories by truckers at prices higher than the rail elevators could pay and was being trucked directly to Chicago, or to pro- [fol. 1747] cessors. The operators were facing ruin when the river market was opened to them. The experience of Mr. Barclay from Wing, Illinois who testified at the hearing before adjournment bears this out.

My grain is sold to arrive in Chicago when in my judgment the premiums are as high as they will go or is hedged and sold at the market upon arrival and unloading at which time the hedge is removed. I pay the cost of transportation, weighing, grading and trimming amounting to about 2¼ cents per bushel. While I now sell substantially all of my grain to the Norris Grain Company, I am under no agreement or obligation to do so. If I can obtain a better price from anyone else in Chicago, I would be able to sell to them. In spite of the fact that the Norris Grain Company is the actual buyer of the grain, I am obliged to pay to it ½ cent per bushel as commission because of the rules of the Chicago Board of Trade which has a virtual monopoly of the grain business in Chicago.

By reason of the highly competitive condition between the Cooperative Allied Grain Dealers Corporation and myself and previously between the Farmers National and myself grain is handled by the river houses on a narrow margin of profit with the result that the producer has received upwards from 2 cents per bushel more for his grain than under the old system. In addition to this the farmer has been relieved of the arduous job of bringing his grain to market.

The price of grain in the Chicago market depends on the [fol. 1748] supply and demand at the market. The more grain in the market to meet a demand the lower the price. We are in competition in the Chicago market with grain arriving by lake from lake points and from foreign countries as well as grain arriving via the Illinois Waterway from Kansas City. A reference to Exhibit 19 prepared by

the Chicago Board of Trade clearly shows the amounts of grain arriving via lake at the Chicago market. It doesn't show the amount of grain arriving from Kansas City but undoubtedly there is a substantial amount depending on navigation conditions.

It is a discrimination against me if the grain that arrives in Chicago via lake or from Kansas City via the waterway past my elevator at Patonville is accorded reshipping rates while the grain which is shipped by me via barge is not permitted such rates. Naturally, the grain which can comply with the requirements of the Board of Trade regarding transit to Eastern Trunk Line and CFA territory will be paid the best price. That grain without reshipping privileges is prejudiced in the Chicago market is plainly seen from the spread between I.P. billing and lake billing. This spread will be greater if a large amount of grain arrives in the market which has no billing.

In my opinion it is in the best interests of most all concerned that the amendments to the tariffs be cancelled for the following reasons:

[fol. 174a] By Exam. Taylor:

Q. Just a minute, Mr. Finnegan. You referred to I. P. billing and lake billing, designating billing coming off from the boats operating on lakes on what has been termed the lake local?

A. What we call the lake local, it is not the proper name for it but the grain men use it. I don't know what the proper name for it is.

Q. It is understood here as lake local?

A. Yes, sir.

Exam. Taylor: Proceed.

Mr. Enoch: Just a moment. Now, if the Examiner please, I don't understand that Mr. Finnegan is qualified as an expert in any capacity other than perhaps in the merchandising of grain, and apparently, though I haven't had an opportunity to read this statement, he is starting out now to argue the propriety of the main issue in this case. In other words, he says the Commission should take certain action for the following reasons. He is going on to read these reasons, 1, 2, 3, 4, 5. That clearly is the subject matter of briefs.

Mr. Macaulay: He has expressed an opinion as a grain merchant of conisderable experience, and I believe his opinion is something which can't be expressed in briefs, but should be expressed here.

Exam. Taylor: We will accept it as a statement of his position.

[fol. 1750] Mr. Macaulay: Yes.

The Witness: The amendments are confusing and probably will not procure the results which the railroads would like apparently to obtain. Under the amendments reshipping rates are granted to grain arriving by lake carrier vessels. A lake carrier vessel can be interpreted to mean any vessel which arrives at the lake dock points from the lake. The South Chicago elevators may be reached either via the Sag Canal or via the Chicago River through the lock into the lake and then southeasterly to South Chicago, a distance of about 15 miles.

The course the Federal Barge Lines now follows: So I will send my barge to South Chicago via the Chicago River and Lake Michigan. After my barge of grain has had the scum and the smell from its trip up the Illinois Waterway washed off of it by its trip through the clear fresh waters of Lake Michigan it will then be a lake carrier vessel and has shown its seaworthiness in the treacherous waters of Lake Michigan. Having arrived fresh as a daisy and having demonstrated that it is worthy and well qualified as a lake carrier vessel, its cargo receives the blessing of the Eastern rails and is awarded a preferential rate of 26 cents per hundred to New York while those barges which take the shorter route down the Sag Canal are so offensive to the nostrils of the Eastern roads that their cargoes are punished by being forced to pay 34½ cents per hundred for the same trip.

[fol. 1751] If it is desirable to ship grain to the Santa Fe elevator on the Chicago River, I will reverse the process by first sending my barge through the Sag Canal into Lake Michigan northwesterly through the locks at the mouth of the Chicago River and down the Chicago River to the elevator. The additional cost necessary for this procedure will be well justified because I will then be accorded the same treatment on the grain which I bring to Chicago from the farms of Illinois as is anticipated to be given to the grain which is brought to Chicago from the farms adjacent

to the Great Lakes including the farms in Canada and from the farms in Argentine and the other countries mentioned in the Chicago Board of Trade's Exhibit 19 and from the farms adjacent to Kansas City. There being no provision in the amendments requiring a prior rail haul before grain arriving by lake is accorded reshipping rates, it is quite logical that this procedure complies with the amendments.

Now, then, we come to the grain arriving from Kansas City, Missouri, and I want to stress the discrimination against me on this grain, as it is so plain that anyone whether they know anything about the grain or railroad business or not, can see it. We will start with a Federal Barge loading at Kansas City with 12,000 bushels of corn, for example. We will say that three kinds of billings into Kansas City will be used on this shipment via Federal Barge: 4,000 bushels of the most preferential billing to [fol. 1752] the Kansas City grain merchandiser to ship east which he will hate to cancel out to put on a barge as he has paid a premium for the grain when he bought it. 4,000 bushels of local or short haul billing for which he did not pay as much premium and 4,000 bushels of truck grain which he bought at a discount. In the meantime I had a Federal barge with 12,000 bushels of corn loaded at Patonville and the tow-boat from Kansas City towing the barge of corn from there stops to pick up my barge of corn which it ties alongside, and ties to the barge from Kansas City, they both go to the same elevator to unload and they both grade No. 2 yellow. They are both unloaded the same day. They both go into the same bin at the elevator in Chicago. So far the 4,000 bushels of no billing grain from Kansas City and my grain are absolutely alike. I would have used all no billing grain in the Kansas City barge in my example but I want to bring out the results back in Kansas, Missouri and Iowa to the farmer there and our farmer in Illinois that cannot ship via river.

Now, then, as far as reshipping from Chicago is concerned under the new tariff, both barges or the 24,000 bushels are identically alike as the new tariff does not give the 8,000 bushels of rail corn any preference over the 4,000 bushels of truck corn that came from Kansas City, but when the buyer of my barge of corn wants to sell it to the East he must pay 4¾ per bushel more freight on it than

he does on the barge he bought fraom Kansas City. He can't eat the barge of corn he bought from me, so the next [fol. 1753] time I have a barge of corn to sell and Kansas City has a barge of corn to sell it is easy to see whose barge he will buy. If he buys mine he will discount me the 4¾ cents per bushel that he has to pay the Eastern line as extra freight.

Now mind you, these two barges moved up the Illinois Waterway, the one from Kansas City, moving 332 miles in it, mine moving 68 miles in it. The farmers from our state which spent $20,000,000 on this waterway takes a licking of 4¾ cents on this grain. If that isn't discrimination I don't know what is but it is even worse than what has been shown here so far. When the Kansas City grain merchandiser had to cancel out rail billing to fill this barge, he would get an idea that that was no go so he would buy enough no billing corn for the next barge. He can buy it, I suppose, at as much discount as Chicago does under the good rail billing. I think the discount has been brought out in this hearing. This would enable him to go into Nebraska, Iowa and Kansas and buy corn and ship it to Chicago via river.

Our worthy opponents in this case have been trying to show that if our corn from Illinois comes in by river and has good billing that they will have so much corn in Chicago that it will depress the market so that the Illinois farmer that cannot use the river to ship his grain will not get as good a price as he would if our corn via river didn't [fol. 1754] have billing. Now then, if the farmers from Kansas, Missouri, Iowa and Nebraska that are within 100 miles to possibly 150 miles of Kansas City can ship their corn to Chicago via water and get billing I wonder if the effect wouldn't be the same on our Illinois farmer that cannot ship via river, or if their bushels aren't as big as our Illinois river bushels. I cannot see why the farmers of the state that spent the most money on its waterways should have to suffer to the extent that they will.

Apparently preferential or reshipping rates over local rates have been accorded grain arriving by barge at Chicago for a long time. I have been told that preferential rates were accorded arriving by barge at Chicago via the old I & M Canal before the competition from the railroads, as testified to by Judge Hayes, put the canal out of busi-

ness. If I can verify this to be a fact I would like to have an opportunity within ten days from the conclusion of this hearing to introduce an exhibit setting forth my findings.

By Mr. Brown:

Q. Now, just a moment there. Why do you want ten days to develop something that you haven't found out up until now?

A. I heard about this about four days ago, Jack, and where I saw this tariff—I haven't had time to go and get it.

Q. All right, is that tariff in existence now?

A. I saw the tariff about three years ago.

Q. You saw the tariff about three years ago?

[fol. 1755] A. I did.

Q. Was it in effect then?

A. Well, now, I can't answer that.

Q. What I want to know, did you see an old tariff that was in effect thirty years ago and has been dead thirty years ago?

A. I don't know how long it has been dead. I just remember three years ago seeing a tariff where the I & M Canal grain had transi. and I saw it in Springfield.

Q. Had transit at Chicago?

A. That is right.

Mr. Macaulay: Your Honor, he said if he can find it, he wants to have an exhibit introduced. If he can't necessarily his statement here carries no weight. I think that is fair.

Mr. Brown: Yes, but Mr. Examiner I want to know when this grain moved via the I & M Canal which had a certain transit privilege he is speaking of; I mean, was it 1910, 1920, 1930 or 1940, that is what I want to know.

Mr. Root: The record on that is quite clear, Mr. Brown. The last load out of Morris is 1908.

Mr. Brown: What has that got to do with this case?

Mr. Root: He referred to Judge Hayes' testimony and your question has been answered already.

Mr. Cole: Mr. Examiner, I think it is well settled, the kind of material that a witness can put in later after the hearing. At a hearing, we have quite frequently seen [fol. 1756] instances where a witness comes across something that he shows to us at the hearing and asks permis-

sion to introduce later; but now I want to call attention to the character of the material that this witness is asking permission to put in later. You see, if we grant him the permission and he comes in later and places something in that we would like to see if it was here now——

Exam. Taylor: To cross examine him?

Mr. Cole: If it was here now, we would cross examine him, and if we give him permission to put it in in ten days, we would be helpless. I don't want to keep out any facts, but I do like to have the privilege of seeing things when they are talked about and not be placed in such a helpless position as I would be placed in if the man was given ten days' time to put in something of which we know nothing about.

Exam. Taylor: Mr. Macaulay, I believe you recognize the opponents would not have the opportunity to cross examine him.

Mr. Macaulay: Yes, sir, I appreciate that and we would incorporate nothing but actual facts.

Exam. Taylor: In view of the objection to it, I cannot allow it.

Mr. Macaulay: Proceed.

The Witness: Barge grain was accorded these rates since the completion of the Illinois Waterway which was more than five years ago. Practices have grown up around it, large investments have been made not only by me but by [fol. 1757] many others. The railroads having encouraged this development and these investments, should not be allowed at this late date to change their minds. To allow the railroads to destroy that which they have encouraged to be built is manifestly unfair.

The benefits to the farmers of the Illinois Valley are definite and here again the railroads, having recognized a practice for a long period of time which has resulted in a definite benefit to a large number of farmers, should not be permitted to deprive the farmers of this benefit. Neither should Mr. Bradford be heard to complain that the Indianapolis Board of Trade is not able to buy as much corn as previously because the farmer is paid too much for his grain, nor the Staley Manufacturing Company of Decatur, Illinois for the same reason, nor the General Foods Corporation because it is unable to buy corn for its Kankakee plant except at a premium over the old basis of Chicago

price less the rail charges to Chicago; nor the Chicago Board of Trade because certain of its members as testified to by Mr. Brennan are being hurt. It has been the public policy of the United States to do everything possible to help the American farmer and the selfish interests of monopolies and big business should not be heard to complain that the farmer gets more for his grain than he otherwise would.

As stated before the reshipping rates on barge grain are a benefit to the country elevator operator who is in the territory adjacent to the waterway. True, there may be [fol. 1758] some who are not willing to recognize progress and adapt themselves to it but this has always been true as a matter of history in the case of every new invention or changing condition.

The Chicago market is benefited. Mr. Bradford and Mr. Burwell established that fact. Undoubtedly, if grain doesn't have reshipping rates, a part at least of that which would otherwise go to the Chicago market will find its way to other markets either via river or via lake. Grain sold in the Chicago market nets the members a commission on each bushel sold. Barge grain having reshipping rates makes a larger available supply to meet the requirements of the rules of the Board of Trade regarding contract grain which is sold to Chicago is generally hedged in Chicago, which might not be the case if the grain is sold elsewhere.

There can be no doubt but that grain that carries reshipping rates will more likely be shipped by rail to the East instead of via lake to the East making for greater revenue for Eastern roads. It is undoubtedly true that one of the reasons the Eastern railroads recognized grain arriving by barge as being entitled under the tariffs to reshipping rates was due to the competition which they faced with the boats plying the Great Lakes from Chicago to Buffalo and other Eastern points. Having applied the reduced rates to the carriage of barge grain from Chicago to the East in order to meet the competition at Chicago of the lake boats from [fol. 1759] Chicago to the East, it would be a violation of paragraph 2 of section 4 of the transportation act to permit the Eastern roads to increase the rates on barge grain except upon changed conditions, none of which have been shown to exist as would justify such an increase.

Most of the grain arriving in Chicago is placed in elevators and later reshipped to consumers in different parts of the country. The service of the Eastern railroad in handling the grain from the elevator to the East is the same whether the grain is placed in the elevator from a freight car on which the full rate is charged or on which the intrastate rate has been charged or from a barge or from a vessel which has arrived via lake. It is a discrimination to charge for like services one rate on grain arriving by lake and another on grain arriving by barge. There is a longer rail haul on grain bought in Chicago by processors than when that grain is bought by the processors in the countryside around its plant and either trucked or short-hauled to the plant.

Mr. Enoch: I don't understand that.

Mr. Macaulay: I think his explanation here will cover that, Mr. Enoch.

The Witness: A good example of this is found in the case of General Foods Corporation which is represented in this investigation. This company was active in the hearings before the Central Freight Association and protested that it ordinarily was unable to buy corn from the surrounding [fol. 1760] territory except at a price higher than the Chicago price less the rail. In other words, it wants to buy on the Chicago basis less the rail——

Mr. Enoch: I object to a reference of that kind, because it is quite obvious that the witness hasn't said everything that that man over before the Central Freight Association said, which would undoubtedly have clarified the statement just made.

Exam. Taylor: Can you bring that out on cross examination?

Mr. Enoch: All right.

The Witness: I think so. In other words, it wants to buy on the Chicago basis less the rail charge but to save for itself and the rail charge. Shortly after the Central Freight Association announced its decision in favor of the amendments,— I mean the amendments we are talking of now, on these reshipping rates—the New York Central filed with the Interstate Commerce Commission its supplement #39 to ICC-LS No. 1939 providing a rate from Kankakee, Illinois, locally to Battle Creek, Michigan of 7 cents per hundred on corn grits. This clearly shows the efforts

of this large processor to deprive the farmer of the benefits of the waterway so that this processor, which built its plant at Kankakee after there was a barge movement on the river could buy corn at a saving to it of substantially all of the rail cost to Chicago and then send it locally to its finishing plant in Battle Creek at an absurdly low rate.

Maybe it isn't proper for me to try to protect the East-
[fol. 1761] ern roads from the pressure which must have been brought on it from this big shipper. The discrimination of the reshipping rates on barge grain at this late date would give an undue and unreasonable preference to General Foods Corporation and other processors in violation of one of the principal objects of the Interstate Commerce Act in addition to depriving the rails of much needed revenues. The elimination of reshipping rates from barge grain will undoubtedly increase the volume of grain which is trucked to Chicago which grain will then be transported East by lake with the result that both Eastern and Western roads will be deprived of a rail haul and the revenues resulting therefrom.

The elimination as to some water-borne grain and retention as to other water-borne grain will result in a gross and unfair discrimination and advantage over not only the Illinois Valley farmer but also as to some water carriers. I understand that water carriers are not subject to the control of the Interstate Commerce Commission and therefore no matter how well conducted a water carrier may be it is still unregulated. A vessel arriving by lake is no more regulated than one arriving by river. The Federal Barge Line should be no more sanctified in its operation in bringing grain from Kansas City, Missouri, than it is when the same tow picks up a barge from my elevator at Patonville, Illinois under its published and uniform rates and takes it to Chicago. The Federal Barge Line is not regulated in
[fol. 1762] one operation and unregulated in another. Water-borne traffic arriving in Chicago is no more unholy than water-borne traffic arriving in Buffalo, where the Eastern roads eagerly seek the handling of the grain. Under the tariffs before amendment there was some semblance of protection to the local rate from Chicago in regard to traffic arriving either by rail or by boat but this protection is to be eliminated and it would then be possible for grain to be dumped into vessels at Wilmette, Illinois, or Whiting, Indiana, and brought to South Chicago, Illinois, for reship-

ment, which would result in a most unjust discrimination.

The Chicago Board of Trade would have the Commission believe that the issue is a discrimination between the treatment afforded intrastate billing, which Mr. Brennan states was sponsored by it, and barge billing. Suffice it to say that the controversy over the barge billing started the latter part of 1938 and involved a practice of long standing while the intrastate billing complained of did not come into existence until later, I believe in April, 1939, and is due to expire June 30, 1940—less than six months from now. If the Chicago Board of Trade was sincere it would be fighting to make the intrastate billing permanent and would be fighting to eliminate those provisions thereof which make it impossible for the grain which has an intrastate charge of 8½ cents or more to have reshipping privileges under the [fol. 1763] tariffs in question. If the intrastate rates are compensatory to the Western roads there seems to be no logical reason why a greater charge should be paid from these points and if it is necessary to reduce the through rates accordingly it should be done. It is not fair for the Board of Trade to shout discrimination when by doing so they uphold an initial rail charge against the producers around Morris, Illinois, for a sixty mile trip to Chicago of 9½ cents per hundred in order that the buyer can send the grain from 800 to 900 miles at a cost of 26 cents if to New York or 16 cents if to Baltimore for export.

It is contrary to the public policy as set forth in section 500 of the transportation act to permit the railroads to change the relationship with water-borne traffic which it has voluntarily assumed and thereby discourage water transportation on the Inland Waterways.

If this proposed tariff wall is thrown up around me, I probably will be put out of business because I have no rail connection with my river house. There are others who are like situated. If the rails desire to clarify the tariffs so that it is unnecessary to show the origin of the grain and the amount paid to the point of reshipment I would have no objection as long as they further provide that there shall be no discrimination between different types of water-borne traffic.

By Exam. Taylor:

Q. Is that all your statement?

A. Yes.

[fol. 1764] Exam. Taylor: Any questions, Mr. Macaulay?
Mr. Macaulay: Nothing more.
Exam. Taylor: Any questions by protestants?
Mr. Cole: I have some.
Exam. Taylor: Protestants.
Mr. Root: No, none by me.
Exam. Taylor: Cross examine. Mr. Cole.

Cross examination.

By Mr. Cole:

Q. Mr. Finnegan, in the early part of your direct testimony, you referred to the approximate time of the beginning of this transportation by water up the Illinois River. When was that, do you remember?

A. Oh, I think—I can't state definitely. I will state as closely as I can.

Q. That is it.

A. It was in July or August of 1934, as I recall it. I don't say that that is right.

Q. Well, was there any movement by water up the Illinois River, say, prior to 1933, in order that we establish a point behind which we need not concern ourselves?

A. I can't answer you that. I didn't live in Morris at that time.

Q. At one time, you said that the Federal Barge Lines rates were a good bit higher than the other river transportation companies. Do you know whether or not the Fed-
[fol. 1765] eral Barge Lines handle any of this grain under their higher rates?

A. I can't say as to that. I know they don't handle—they haven't handled any of mine under this higher rate for a year. However, the Federal Barge Line has handled considerable of my grain on those higher rates previous to this past year.

Q. Was that previous to the coming to the river of these additional transportation companies?

A. Yes, I would say so. Not entirely, however.

Q. Do you sell practically all of your grain to the Norris Grain Company?

A. I do.

Q. And where is the Norris Grain Company located where you sell it to them, here in Chicago?

A. I sell it to them here in Chicago.

Q. Do you know what they do with the grain after you sell it to them?

A. No, I don't. They unload it and that is all I know, what they do with it. They have to sell it.

Q. Yes, I understand that. Do you know where their areas are into which they try to get out their grain?

A. Well—no, I don't.

Q. You gave an illustration as to a barge moving up here from Kansas City and that tow picking up your barge at Patonville and carrying that to Chicago, and the fact that east of Chicago, the different grain taken from Kansas [fol. 1766] City and that taken from Patonville might secure different levels of proportional rates. Are you aware of the fact, Mr. Finnegan, that at the present time a car of grain may arrive at Chicago from Minneapolis and another car of the same kind of grain may arrive at Chicago from Kansas City, and those two cars be placed in the same train, and that train sent to Cleveland, Ohio, and the car of grain from Chicago to Cleveland, that arrived at Chicago from Kansas City, would actually pay 3 cents per hundredweight less from Chicago over to Cleveland than that car of grain that arrived there at Minneapolis?

A. I am aware of that, yes.

Q. You are aware of that?

A. Yes.

Q. Do you think that that situation presents the same foundation and the same illustration as you gave on the movement of this barge from Kansas City to Chicago?

A. No, I don't think it does. The barge movement from Kansas City in one instance is—it is not regulated but it has its rates—I am not answering that right. Just a minute.

Mr. Macaulay: It is a rather involved question.

The Witness: Will you read it, please.

(Question read.)

The Witness: I don't think it does, for this reason, Mr. Cole. There are two kinds or two classes of water carriers in this one tow, in this same tow that brings these two [fol. 1767] barges in, where that isn't so on your rail movement in to Chicago.

By Mr. Cole:

Q. What are the two classes of carriers there? I thought that your barge was hooked alongside of the barge from Kansas City?

A. That is right, it is in the same tow.

Q. Yes.

A. Therefore, it should have exactly the same privileges. But one is—I don't like to say unregulated, because no water carrier is regulated, but one accorded billing and the other is just accorded nothing. Now, whether there would be a difference in price—what I am trying to get at is consideration, does show some consideration, but it shows a 3 cent difference, but this barge movement in shows absolutely no consideration.

Q. Now, Mr. Finnegan, if you were confronted with this problem, do you think it would have any bearing upon that situation: If the grain comes from Kansas City to Chicago via the water line and if it comes from the Northwest, say Minneapolis to Chicago via a water line too, both kinds of grain will end up at Chicago and go into an elevator. They have both gotten to Chicago by water line, one on the barge from Kansas City and one on the lake vessels from the Northwest, and then those two cars of grain are shipped east of Chicago to Cleveland. The car that got in there via the lake steamer goes out to Cleveland at 3 cents a hundredweight higher than the car that got in there via barge from Kansas City. Would you say that that would [fol. 1768] be a proper rate set-up?

Mr. Macaulay: I don't believe that is a fact, is it? Is there any set of tariffs that we can refer to that you can base that on?

Mr. Cole: Yes. Exhibits 1 and 2 in this case.

Mr. Macaulay: And both cases result in a barge movement, one from Minneapolis, did I understand that?

Mr. Cole: No, one is handled from Minneapolis to Chicago via lake steamer.

Exam. Taylor: That is rail to perhaps Duluth or Superior?

Mr. Cole: Yes, via lake steamer to Chicago. The other one moves all barge up the waterway from Kansas City to Chicago. Both cars go into the elevator at Chicago.

Mr. Macaulay: And there is through billing from Minneapolis to Cleveland.

Mr. Cole: Oh, no.

Mr. Macaulay: By way of the lakes.

Mr. Cole: Oh, no, there is not any through billing. Both cars are reshipped from Chicago to Cleveland. Both cars are sold by the same house in Chicago which had bought the two cars and the fellow sold them to the same man in Cleveland and shipped them out.

Mr. Macaulay: And do they both leave Chicago on different rates?

Mr. Cole: They both move in the same train.

[fol. 1769] Mr. Macaulay: Under different rates from Chicago?

Mr. Cole: Yes, they go under different rates from Chicago.

The Witness: My answer to that, Mr. Cole, is this. Again, in both instances the railroads recognize it, they recognize both kinds of inbound water grain; where in our instance, via barge from Patonville, they don't recognize our inbound water borne grain. Both these types of inbound grain into Chicago from Kansas City via barge and from Minneapolis via lake are both recognized as a paid-in by the Eastern road.

By Mr. Cole:

Q. All right, now, Mr. Finnegan, but if the barge coming up from Kansas City, if that barge would secure the benefit of the lower proportional rate out of Chicago and if your barge is hooked up alongside of that barge from Kansas City, and if your barge thus is entitled to the same consideration as the barge from Kansas City, why shouldn't you, Mr. Finnegan, use the lower ex-TM proportional east of Chicago, than to require you to use the 3 cent higher proportional rate that is applicable on traffic that originated in the Northwest? Why should the carriers ask you to pay that 3 cent higher proportional? Shouldn't you get properly the lower proportional that is applicable on traffic from the Southwest territory?

A. It is impossible for me to take the lower rate under the present structure, out of here. The only rate I would have, if these supplements go into effect, the only rate I have out of here is the local rate. There is none other for me.

[fol. 1770] Q. I mean if these supplements do not go into effect and the situation continues as it is now, my question

was based upon that premise. Why should you pay the higher ex-Northwest proportional instead of getting the benefit of the ex-TM proportional out of Chicago?

A. Well, under one tariff I have to pay on the Northwest basis; under another one, I don't. I am not going to get involved in tariffs because I am not an expert in that line. On one of the outbound tariffs from Chicago, as it stands now, on barge grain I am forced to use Northwest. On the other tariff outbound, I am not forced to use it.

Q. Do you know what you have the privilege of using in that event, where you are not forced to use the Northwest billing?

A. Yes.

Q. What do you use there?

A. The trunk line tariff.

Q. The trunk line tariff, and under the trunk line tariff, what basis of proportional rate east of Chicago do you use?

A. Now, I will answer you that, and then I am not going to get any further involved in tariffs, because I don't have them here and I am not an expert on that line. 16 cents to Baltimore or 24 cents to New York. It is in that tariff at about those figures. Maybe it is half a cent out of line there, I don't know.

Q. Now, you stated at one place that the rail rate or the [fol. 1771] rail tariff situation encouraged the development of this transportation via the water line up to Chicago. Do I understand, Mr. Finnegan, that you are of the impression that the improvement of the Illinois Waterway and the institution of barge traffic on that waterway from these origins down along the waterway up to Chicago depended upon there being such a reshipping privilege out of Chicago as we are concerned with now?

A. It didn't depend on it, Mr. Cole, but if the railroads didn't want to handle that grain, they should have protested, in my estimation, when the waterway was opened, not after it has been operating five years in the great volume of business moving over it, great amounts of money invested in it.

Q. Are you assured in your own mind that this waterway development would have taken place in the same degree and the waterway traffic would have developed in the same way it has developed quite apart from the reshipping privileges which they might have had over rail rates at Chicago?

A. Definitely not. It wouldn't have reached nowhere near the proportions it has reached.

Q. Now, east of Chicago, Mr. Finnegan, are you familiar with the fact that there are two separate and distinct rate territories, one called CFA territory and one called Trunk Line territory?

A. I am.

Q. When I use either of those terms, do you know which [fol. 1772] territory I refer to?

A. I do.

Q. Now, when we are considering possible traffic from Chicago to Trunk Line territory, is there at the present time and has there been in existence for quite some number of years lake rates from Chicago to Buffalo which may be used in connection with ex-lake rates from Buffalo into Trunk Line territory?

A. That one I can't answer you.

Q. Is there?

A. I can't answer that; I don't know.

Q. You don't know whether——

A. No.

Q. —whether there are lake rates from Chicago to Buffalo? Do you know that part of it?

Mr. Macaulay: That is by rail or by lake?

By Mr. Cole:

Q. Lake rates from Chicago to Buffalo applicable on grain. Do you know whether there are such?

A. Out via the Great Lakes, you mean?

Q. What is that?

A. Via the Great Lakes, or via rail?

Q. A rate applicable on transportation via the lake, in a lake steamer that gets it at Chicago, floats it up Lake Michigan through that little areaway there, still in the lake steamer, and it is still floating down through Lake Erie and over to Buffalo where it ties up to a port and the boats un- [fol. 1773] loaded into an elevator at Buffalo. Do you know whether or not there are rates in effect via those lake steamers that will take the grain around that way?

A. I can't say whether there is any tariff on that or not. I know they rise and lower with the demand upon them. Now, whether they have a tariff, I can't tell you.

Q. Now, if that has caused you any trouble, we will eliminate this question of rates. Do you know whether there is a charge and that there is possible transportation via lake steamer from Chicago to Buffalo?

A. Yes.

Q. Are you at all familiar with the approximate range in costs of transportation via the lake from Chicago over to Buffalo?

A. Well, fairly well on a—not as to what the charges are, but on a competitive basis with the roads, just before the lakes closed, the charges were about the same via lake as via rail. You can't tell what the lake charges will be. They vary.

Q. Then I understand your testimony to be, Mr. Finnegan, that the charge for shipping the grain from Chicago over the lake, in a lake vessel from Chicago to Buffalo, is the same in amount as it costs to ship the grain from Chicago to Buffalo in a railroad car on the rail line, is that your testimony?

A. That is not my testimony. I said when navigation closed, they were very close. As I mentioned before, those lake rates fluctuate.

[fol. 1774] Q. Mr. Finnegan, of course I think we all understand that when the lake is a solid sheet of ice, it is impossible for you to ship the grain via lake under any conditions.

A. Mr. Cole, what I was getting at was not that it is possible to ship via lake now, but before navigation closed, a short time before navigation closed, the lake rate and the rail rate were very close to the same.

Q. Well, Mr. Finnegan——

A. Prior to that, prior to the War, the lake was cheaper than the rail.

Q. Wait a minute. When the lake is open to navigation and when the boats are plying the lake routes in numbers and volume, are you familiar with the approximate level of the charge for hauling a shipment of grain from Chicago to Buffalo via the lake lines?

A. Not familiar enough with it to go in as testimony.

Q. Are you familiar with the level of the ex-rail rates from Buffalo to various points in Trunk Line territory? Are you familiar with the level of those charges?

A. Not familiar enough to go in here no.

Q. All right. Mr. Finnegan, are you familiar with, then, the totals of the charges from Chicago to Buffalo lake, Buffalo to Trunk Line territory rail, in comparison with the level of the proportional rates that are now applicable on this grain that moves up to the Illinois Waterway to Chicago?

[fol. 1774a] A. I am not in a position to answer that without my tariffs.

Q. Then, Mr. Finnegan—that is all right. Then, Mr. Finnegan, if you are at the present time, if you are unable—listen to me carefully, please. If you, sitting there, cannot tell me the approximate relationship of the charges of handling grain over the lake to Buffalo, thence rail to the various destination points in Trunk Line territory, if you are unable to tell me how that bears up with the ex-proportionals from Chicago rail to the same destination territory, how is it possible for you to contend that the elimination of that ex-proportional rate from Chicago all-rail will affect your situation one single, solitary particle?

A. I say that I can't answer your question as I should here. But when I have my tariffs all before me and start figuring them out, then I could answer your question. You realize that I don't have them here, I have no notes on them.

Q. Well, Mr. Finnegan, will you agree with me to this extent: If—now, this is a hypothetical question that I am putting to you; I am saying "if."

A. Yes.

Q. If the rail rates from Chicago to Trunk Line destinations on the basis of the present proportional rates applicable to the ex-river traffic, if that basis is a higher cost than it would cost the grain shipper in Chicago to move his goods via lake to Buffalo and thence rail lines to the same [fol. 1775] destinations, how much bearing do the ex-rail proportionals out of Chicago have on the ability to move the stuff around?

Mr. Macaulay: May I have that read?

Exam. Taylor: Read the question.

(Question read.)

Mr. Macaulay: It sure is involved. Can you simplify that at all?

Mr. Cole: What?

The Witness: It is all right.

Mr. Macaulay: Maybe he can answer it.

The Witness: It is all right. In the first place, for four months of the year or whatever part of the year the lakes are froze, there is absolutely no way to move our ex-river grain out. The elevators here are full of Government corn, wheat. If they weren't, they would charge us a cent—over a cent a bushel a month to carry it; if they could carry it. Understand, they are so full, they can't carry it this winter.

If we were to carry it back home in our country elevators until the opening of navigation, we couldn't hedge it. If our grain don't have billing, there is no use hedging it. When we get in here in April with it, Minneapolis and Duluth are underselling us for the time being when navigation first opens. We can't compete with them. Our grain would have to stay back in the country until some time in May or June, but we would try to carry it for the winter months.

[fol. 1776] It would be a physical impossibility to carry it without drying facilities and so on, so during the three and a half or four months that the lakes are closed or during a period when lake vessels are hard to obtain, as they were last fall, our grain would be bought at whatever discount it took to move it on east via the local rates.

By Mr. Cole:

Q. Mr. Finnegan, when does corn ripen?

A. It ripens October, November.

Q. October and November?

A. Right.

Q. How long after the ripening and selling of corn is it that lake transportation over the lakes closes?

A. Oh, about the middle of December it closes; average from the 10th to the 15th, I guess.

Q. We have just covered now the situation involving Trunk Line destinations. And you are familiar with the two, CFA and Trunk Line?

A. Yes.

Q. Now, will you say that the necessity for the proportionals out of Chicago would be perhaps stronger for destinations in CFA that don't have the benefit of that lake route to Buffalo than the requirement would be to have the thing applicable to Trunk Line Territory?

A. Well, I think it should be applicable to both, if it is to one.

[fol. 1777] Q. You think that if it is applicable to either one, that there is no question but what it should be applicable to both in the same degree, is that right?

A. That is right.

Q. Is that your position?

A. That is right.

Q. But if we did, at any time, make a price on this river grain as between the two territories, which territory do you think should be treated with special consideration, CFA or Trunk Line territory; if there was a difference, now?

A. Oh, that is quite too big for me. Smart men try to handle that stuff. I can't answer that. That is way ahead of me.

Q. Well, Mr. Finegan, if you were informed that definitely there has already been made a distinct differentiation in the application of these rates, whether the territory was CFA or Trunk Line territory, would that surprise you to learn that?

A. Yes, it would.

Q. How could you figure that such a differentiation could possibly have come about?

A. There is only two reasons that the grain rates change, that I know of, and one is when the railroads want them changed, and one is when the Board of Trade wants them changed.

Q. Now, can you conceive of there being any—I am asking you now as a grain merchandiser in Chicago—can you conceive of there being any different foundation to found [fol. 1778] your method of construction of these things on or basic reason for making the application of the rates quite a bit different to CFA destinations west of Buffalo-Pittsburgh, than they make them when they are concerned with that territory east of Buffalo-Pittsburgh, Trunk Line?

Mr. Macaulay: Mr. Cole, isn't that really the railroad's case, to show the reasons for it, rather than this witness'?

The Witness: I will answer his question. Because you are in direct competition with the lakes all the way to the Atlantic Coast, where you are not in direct competition with the lakes into all CFA territory.

By Mr. Cole:

Q. I see, Mr. Finnegan. You then feel that there is a justifiable basic reason that we had under consideration

when we were considering those different situations, and that difference unquestionably had something to do with the possibility of that transportation over the lake?

A. Competition.

Q. Competition?

A. Has things to do with everything.

Q. Thank you. Are you sufficiently familiar with the details of these different tariffs to Trunk Line destinations and to CFA destinations so that I could with you go into those differences in construction of the tariffs from which we get a different basis to CFA than to Trunk Line?

A. No, Mr. Cole, I am afraid we would waste time.

[fol. 1779] Q. Thank you, I just wanted——

A. The only thing I know, is when they are here before me, I can figure them out for Finnegan. Outside of that, I don't know anything about it.

Mr. Cole: Thank you. That is all I have.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Finnegan, I was interested in the first part of your statement where you said that the local elevator need never have any fear from you, if he let you have a fair share of his grain business. Did you make that statement?

A. Right.

Q. Well, are you in a position to punish him if he doesn't let you have——

A. No.

Q. Wait a minute. What you think is fair?

A. No, I can't say that I am.

Q. What do you mean by he needn't fear you if he does what you conceive to be the right thing?

A. He needn't fear that I will make bids to the farmers in his territory, direct to the farmers.

Q. The fact of the matter is that you and the others engaged in similar lines of business, together with those whom you deal in Chicago, are in a position at a moment's notice to put the local elevator in your territory, with whom you are now dealing, out of business, is that a fact?

[fol. 1780] A. No, Mr. Enoch, it couldn't be done. I have given that a great deal of study, whether grain should be bought direct at the river, possibly more study than anyone else has given it; whether it should be bought direct or not.

And the extra cost of handling, the number of accounts that would have to be handled at the river, if it were bought direct, would more than justify the country elevator's position.

However, if you read farther, you will note that I say I buy in instances where the country elevator will not accept any river bid, even though it is higher, and thereby punishing the farmer in his territory by not paying him as much as he should.

Q. If the local elevator, in your judgment, is punishing the farmer, you and others in the same position you are in, are in a position also to punish the local elevator, are you not?

A. No.

Q. Then tell me what you meant when you said that, "If the local elevator does the right thing— " you are going to be the judge, now, whether it is the right thing or not— "then he needn't fear me." What do you mean by that?

A. He needn't fear that we will even give bids to farmers in his locality, even quote them a price on corn. We will tell them to go to him, get his price.

Q. I don't believe you recall what you said. You said that he needn't fear that you would put him out of business. [fol. 1781] A. That is correct. We couldn't put him out of business if we wanted to.

Q. Why should he ever fear it and why was it of sufficient importance to you to make it one of your features here?

A. It was sufficiently important to make it one of my features because I heard it mentioned by about five people in this hearing before adjournment.

Q. You didn't mean what you said then. You say here, "However, the local elevator operator need never fear that I will put him out of business if he will but sell me a fair amount of the grain from his territory if my price is as high as he can obtain elsewhere."

A. That meant if he will sell me a fair amount of his grain, if it is as high as he can obtain at Ottowa or at Allied or any of the other river houses.

Q. We understand that, but suppose he doesn't. Then he should fear you? Isn't that what you intended to say by that statement?

A. No, he should fear holding the price too low to the farmer, because if he does that, then the farmer will get a bid from my place.

Q. Why did you say he needn't fear you would put him out of business if it wasn't possible for you to put him out of business?

A. Well, it might be possible to make it miserable for him, [fol. 1782] but as far as putting him out of business, we couldn't do that.

Q. You want to say, then, that the little elevator needn't fear you are going to make it miserable, instead of putting him out of business?

A. That is really what I should have said, I suppose, but it is such a minor difference.

Q. The fact of the matter is that all of the local elevators are there at the will of yourself and the others engaged in your line of business?

A. No, I can't say that they are.

Q. What economic purpose, as far as handling of grain is concerned, do they serve?

A. That I tried to explain to you.

Q. As far as the physical handling of grain? If I didn't say "physical," I should have mentioned it.

A. It would be impossible for the river elevator to have enough clerks and keep its records out in three or four, five counties, mortgages, landlords and so on, and the landlord and tenant differences, it would be impossible to hire that help as cheaply in our office in Morris as the local country elevator can do it back home, where he knows everyone. He has no added expense to find out those things, where if we at Morris will do it, we must pay for it.

Q. Do you mean to tell the Interstate Comerce Commission that you couldn't handle—do you mean to tell the In- [fol. 1783] terstate Commerce Commission that you, as a business man, couldn't handle the clerical expense and bookkeeping at your local elevator or at your elevator based on 2 cents a bushel, the amount which you now allow to the country elevator?

A. The country elevator doesn't get 2 cents a bushel.

Q. How much does he get?

A. My customers are lucky if they get a cent.

Q. All right. That is a cent a bushel.

By Exam. Taylor:

Q. Wait a minute. By your customers do you mean——
A. My elevator customers.
Q. From whom you buy?
A. That is right.
Q. From whom you buy or through whom you buy?
A. Through whom I buy.

By Mr. Enoch:

Q. All right, a cent a bushel. You couldn't run an accounting and bookkeeping establishment at your elevator there with the expense of a cent a bushel?
A. It would require three or four men on the road also and I couldn't do it for less than a cent a bushel.
Q. Could you do it for a cent?
A. I imagine I could. That is the figure that I have placed it at that it would cost me if I had to do it.
Q. Where is the Finnegan Grain Corporation incorporated?
A. It is incorporated in Grundy County.
[fol. 1784] Q. In the state of Illinois?
A. Yes, sir.
Q. And the Finnegan Elevator Company.
A. The same.
Q. State of Illinois?
A. Yes, sir.
Q. Who owns the stock in Finnegan Grain Corporation?
A. My wife and I.
Q. Who else?
A. My brother.
Q. Any other stockholders?
A. No, sir.
Q. What are the assets of Finnegan Grain Corporation, physical assets?

Mr. Macaulay: I don't believe that was brought out on direct. Does he want a balance sheet or what is he after here?

By Mr. Enoch:

Q. Do you own your elevator there on the river?
A. The Finnegan Grain Corporation doesn't own the elevator on the river.

Q. Who owns the elevator?

A. The Finnegan Warehouse Company—the Finnegan Elevator Company, rather.

Q. Is that an Illinois corporation?

A. Right.

Q. Pardon me?

[fol. 1785] A. Yes.

Q. Who owns the stock of that?

A. The same people own that as own the stock in the Finnegan Grain Corporation.

Q. Any other stockholders?

A. No, sir.

Q. What are the physical assets of this third corporation other than the elevator and the land on which it is located?

A. That is all it has.

Q. Right there in Morris?

A. Yes.

Mr. Macaulay: What third one was that, Mr. Enoch?

By Mr. Enoch:

Q. Didn't you name a third corporation?

A. No, I didn't.

Q. Pardon me; the second corporation.

A. Right.

Q. The Finnegan——

A. That is the one that owns the elevator.

Q. Any mortgages out on that?

A. No, sir.

Q. Do you owe any money?

A. Yes, sir.

Q. To whom?

Mr. Macaulay: I object to that. I don't believe that has any bearing on it.

[fol. 1786] By Mr. Enoch:

Q. Do you owe any money to anybody in the grain business, any corporations?

A. Yes, sir.

Q. Any shippers along the Illinois River, any shippers of corn coming up the Illinois River?

A. No, I don't get you straight.

Mr. Macaulay: I object to that.

The Witness: Any receivers of corn?

By Mr. Enoch:

Q. Yes.

A. By "receiver" you don't mean a cash handler, is that correct?

Q. I am trying to avoid naming anyone's name. If you want me, I will name them; I will name them to you.

A. All right, sure.

Q. Do you owe any money to the Norris Grain Company?

A. Yes, sir.

Q. Continental?

A. No, sir.

Q. Any other grain company?

A. No, sir.

Q. Do you owe any money to the Quaker Oats Company?

A. No, sir.

Mr. Root: A little louder, Mr. Enoch, please. Maybe I am deaf.

By Mr. Enoch:

Q Do you owe any money to the Quaker Oats Company? [fol. 1787] A. I couldn't say. Perhaps they hauled grain yesterday.

Q. I am talking about business deals for money.

A. No, sir. If I do, it is a small amount for grain hauled yesterday.

Q. You handle all of their grain at Morris that comes up the river?

A. I buy all the Quaker Oats grain at Morris that comes up the river, yes, sir.

Q. All the corn grown in Illinois by — large, generally, now, is competitive at Chicago or the Eastern consuming points on a rail basis, isn't it; on a rail basis, now. I am emphasizing that.

Mr. Macaulay: May I have that read, please?

Exam. Taylor: Read the question.

(Question read.)

Mr. Macaulay: Which is that, Chicago or at the Eastern consuming points?

Mr. Enoch: Either one; both.

The Witness: Competitive on a rail basis?

By Mr. Enoch:

Q. Yes, I mean the farmer here at Rockford can compete with the farmer at Morris or any other point, generally speaking, in Illinois, one farmer, on a rail basis at Chicago or at Eastern consuming points?

A. It is competitive to the purchaser of corn at Chicago or in the East, but it is not competitive, as I would say, [fol. 1788] on an all-rail basis. Was that the question?

Q. Yes, that is right.

A. No, I wouldn't say that it is.

Q. Well, isn't it true that on a rail basis, this corn coming to Chicago from any point in Illinois has a common value at Chicago?

A. That is right.

[fol. 1788a] Q. And up until the time this waterway transportation came in, that was always the situation, wasn't it?

A. No, I believe that there were—before the waterway came into being, I believe there was rates established—you represent the Rock Island, do you not?

Q. Yes, but that doesn't make any difference.

A. Well, to meet truck competition it raised the price of corn to the farmer around Morris. It was competitive in the terminal markets; but the price back to the farmer varies greatly.

Q. Ordinarily, now, the man selling corn in Illinois, the farmer in Illinois selling his corn, the price to him paid by the consumer at Chicago or the merchandiser at Chicago, the price at Chicago is gauged quite largely by the freight costs, rail freight costs from origin to Chicago, isn't that right?

A. Now, in some parts of the state it is entirely that way.

Q. How was it at your point before the waterway came in and before the truck came in?

A. Then it was gauged by rail.

Q. All right.

A. Until prior to that time, it was by the I & M Canal.

Q. You don't know anything about the I & M Canal, do you?

A. No, I understand I don't. But I do know the record of it.

Q. What record do you know about it?

A. I know grain was moving by it instead of by the railroad.

Q. Do you know anything about Interstate Commerce [fol. 1789] Commission regulations prior to 1906?

A. No, sir, I don't know anything about it.

Q. There wasn't any business on the I & M Canal after that time?

A. Mr. Enoch, the I & M Canal has been discussed when it started operation and when it quit several times, and I think it is wasting time to go into that farther.

Q. Did I ask you anything about the I & M Canal?

A. You asked me about whether it was in 1906, whether it was operating and so forth.

Q. Didn't you make a statement first about the I & M Canal?

A. Yes, I said before the rail——

Q. If you don't think it is worth while to mention it, just don't bring it up and I will never ask you a thing about it.

A. All right.

Q. Isn't it a fact that you at Morris and others engaged in the same line of business that have available, because of your particular location, this waterway transportation are in business down there and using the waterways solely because of the spread between the cost of getting grain to Chicago from your locality by water and by rail?

A. Yes, sir.

Q. That is true, isn't it?

A. That is true.

Q. Now, would you have any objection to making the all-[fol. 1790] rail cost from Illinois points, including Morris to the East, on a level with the cost by water from Morris to Chicago, thence rail beyond?

A. Providing you lower the rail rates, I would have no objection.

Q. You would have no objection?

A. Providing you raise the water rates, I would.

Q. You say you would have no objection?

A. Providing you lower the rail rates and make them through yourself.

Mr. Root: May I have that question read.

Exam. Taylor: Read the question.

(Question read.)

Mr. Macaulay: I think he has answered that question.

Mr. Enoch: I don't think he has.
Mr. Macaulay: Read his answer.

(Answer read.)

Mr. Enoch: I am talking about lowering the rail rates.
The Witness: I have no objection.

By Mr. Enoch:

Q. Wouldn't that increase your competition down at Morris and put all of these men who have gone out of business down there back in competition with you?
A. Well, I think as long as the river flows, we keep the good will we have there, I don't think it would put us out of business, but it would hurt us terribly.
[fol. 1791] Q. It would hurt you?
A. Yes, it would.
Q. It would take away all the advantage you have got, wouldn't it?
A. Surely.
Q. So you do depend upon the spread between the rail cost and the water-rail cost, don't you?
A. Right.
Q. For a living?
A. Right.

Mr. Enoch: That is all.
Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen, come to order.
Mr. Enoch: Mr. Examiner, I had a note here I overlooked; two, in fact.
Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Finnegan, what do you know about grain coming up the river, Chicago grain from St. Louis or Kansas City?
A. Well, grain coming in from Kansas City——
Q. Do you know that there is any?
A. Oh, yes.
Q. Corn?
A. I can't swear as to whether there has been any corn, [fol. 1792] because the Missouri River hasn't been navigable very long, the service has been poor; but I under-

stand they are going to have better service starting next summer.

Q. Do you know of a single shipment of corn going to Chicago from either St. Louis or Kansas by water?

A. I can't point out any barge number.

Q. I am asking you, do you know of any?

A. No, I don't.

Q. Do you know of any other grain?

A. Yes.

Q. Of your own knowledge?

A. Yes.

Q. When?

A. Last summer.

Q. How much, do you know?

A. I can't tell you that.

Q. What was it?

A. Wheat.

Q. Wheat?

A. Yes.

Q. From where?

A. From Kansas City.

Q. You don't know how much?

A. No, sir.

Q. You don't know whether it is one barge?

[fol. 1793] A. No, sir.

Q. As a matter of fact—are you sure it was last summer?

A. Yes, sir.

Q. Are you personally or were one of your corporations indebted to any other grain house than the Morris Grain house?

A. Am I indebted to any other grain house?

Q. Yes, sir.

A. Yes, sir, I am indebted to M. L. Vehon.

Q. Lowell Hoit & Company?

A. No, sir.

Q. When you say you are indebted, you mean the Finnegan Grain Corporation?

A. No, sir.

Q. Or the Finnegan Elevator Corporation?

A. No, sir, neither one of them. I am not indebted to them; to M. L. Vehon.

Q. Are either one of these corporations indebted to you?

A. No, sir.

Mr. Enoch: That is all.
Exam. Taylor: Mr. Day.
Mr. Day: No questions.
Exam. Taylor: Any other questions by respondents? Mr. Brown.

By Mr. Brown:

Q. Mr. Finnegan, I understood you to say in answer to one of the latest questions of Mr. Enoch that you would [fol. 1794] be satisfied, or rather would have no objection if the through rail rate from Morris and that vicinity to the East was the same as the barge cost plus the reshipping rate?

Mr. Enoch: I said the charges were the same.
Mr. Brown: The charges?
The Witness: Read it, please.
Exam. Taylor: Read the question.

(Question read.)

The Witness: Barge cost plus the reshipping?

By Mr. Brown:

Q. If the through charges for the all-rail were the same as the combination charges, barge plus rail through Chicago?
A. Yes.
Q. You say it would hurt you?
A. It will hurt me. Providing the rail rates are lowered, I would be satisfied.
Q. Now, do you mean the rail rates up to Chicago lowered?

Mr. Macaulay: You said the through rate from Morris to destination.
Mr. Brown: That is what Mr. Enoch asked.
Mr. Macaulay: Yes.
Mr. Brown: And I am coming to the other leg of it.
Mr. Macaulay: Other end of it?
Mr. Brown: Yes.

By Mr. Brown:

Q. You said providing the rail rates are reduced. What [fol. 1795] rail rates?

A. I wouldn't care where you reduce the charges, so you make the charges equal. Now, understand, the charges.

Q. Yes.

A. I am loading—I am unloading the barges where you don't have to unload the cars.

Q .Transportation charges. The railroad has got nothing to do with the unloading of the cars, the barges.

A. Mr. Enoch brought in the point of charges.

Q. I will make it transportation charges.

A. Then that is different.

Q. Your answer would be different?

A. Yes, sir.

Q. You want the railroads to equalize any carload cost of unloading or loading barges that it does into and out of cars?

A. No, sir, they don't have to unload the cars, if they got a through rate from Morris into that territory. They will go straight through, they won't unload here.

Q. Oh, I see, you are technical. Do you mean to say that your answer would be different if the rail grain stopped in Chicago and was transited and then went on east?

A. In that case, if the rail grain is shipped in Chicago and is transited and goes on east, it is all right with me if the total rail charges that stop here and take transit from Morris and vicinity to the East are the same as the [fol. 1796] rail and the water charges from Morris to the East, with the same transit privilege here as the rail grain has.

By Mr. Cole:

Q. Water and rail charges?

A. Water and rail, that is right.

By Mr. Brown:

Q. Water first and then rail?

A. That is right.

Q. Now, if the rail movement up to Chicago thence lake was made the same as your charges, barge thence the lake, would you have any objection?

A. No, sir. Yes, sir, I would.

Q. Why?

Mr. Macaulay: That contemplates a trip from Morris to Chicago? You are still on that leg, aren't you, from Morris to Chicago?

Mr. Brown: No, sir.

Mr. Macaulay: Read the question, then.

By Mr. Brown:

Q. From Morris up to Chicago by rail, thence lake to the East, as against barge up to Chicago, from Morris to Chicago, thence lake; and I asked if that was satisfactory. First he said yes; now he says no. Now, I would like to know the reason.

A. I didn't want to say the reason because it is so—it is an eye for an eye. The railroads are trying to take from the water carriers and discriminate against them. Now, then, if you want to say it that way, it is an eye for [fol. 1797] an eye; where we have got all the water traffic discriminated against.

Q. You think, then, it would be all right for your grain to have part water haul to Chicago, thence another rail haul to the East, and it is perfectly all right with you if the through rail haul from Morris and vicinity, whether stopped at Chicago or not, to the East, is made exactly the same?

A. Right.

Q. All right, but when it comes to an all-water haul of your grain, barge to Chicago, thence lake, as against a rail haul from Morris to Chicago, thence lake, you think that ought to have the advantage?

A. Yes, sir.

Q. On what leg of that route—the two legs, one west of Chicago, and the other—what leg of that route do you think you ought to have the advantage on?

A. It wouldn't make any difference.

Q. It wouldn't make any difference?

A. No, sir.

Q. In other words, you would be satisfied if you got a lower rate via lake on your barge grain than the rail grain, is that it?

A. I don't care which way it is done. I don't care whether it is lower lake or lower river.

Q. But you don't want the all-water route to have as high a rate as the rail plus water?

[fol. 1798] A. No, I don't. As I said before it is merely an eye for an eye matter.

Q. Oh, yes, I know. Now, you made this statement, you were talking about the time you selected your site, 1934,

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solely on the river and has no rail connection. You said, "At the time the site was selected, there was no apparent need for a rail connection because of the then provisions of the rail tariffs relative to grain arriving in Chicago by water, and I was assured that the grain shipped by me by barge to Chicago would not be discounted by reason thereof."

Now, what assurance did you have and who assured you that it wouldn't?

A. One of the offices that assured me was your office. Whether it was Mr. Benson or you, I just can't remember. Rosenbaum Brothers, Norris Grain Company, M. L. Vehon, Stratton Grain Company, any one of the commission houses in Chicago, plus your office. Now, I don't say whether it was you or whether it was Mr. Benson; it has been so long ago I can't remember.

Q. Say it was me. Benson and I are the same, you know, when it comes to interpretation.

A. I know. It came out of your office.

Q. All right. Here were people who were not at all connected with the railroad, and as far as I know, were not connected with the barge corporation, and you accepted their assurance that you would not be disturbed in your then [fol. 1799] present situation under which, I understand you to say, you had the benefit of the reshipping rates east.

A. Oh, no; I was told by railroad men, too.

Q. That is what I want to get at. Who told you and assured you, now, that it wouldn't be removed?

A. They didn't assure me and I didn't say that I was assured it wouldn't be removed.

Q. You said it would not be discounted by reason thereof.

A. Right.

Q. What did you mean by that language?

A. They didn't say it wouldn't be removed.

Q. Then, what did you mean by saying this: "Would not be discounted by reason thereof"? By reason of what?

A. By reason of moving in by water.

Q. Oh. Then you did have some conversation with some railroad men who assured you that that wouldn't be discounted. Now, what do you think he meant when he said you wouldn't be discounted? In price, in the rate east, up to Chicago? In what way was the deal to occur?

A. It would occur out from Chicago, naturally.

Q. And you were assured that would not happen?

A. That is right.

Q. Do you know that under the law, the railroad -as to obey its tariffs?

A. Yes, I do.

[fol. 1800] Q. And has a right to change them at any time they see fit?

A. I understand that.

Q. You didn't have it in writing, this assurance in writing?

A. No, sir.

Q. Now, I understand that you were the pioneer in the water business from around Morris, having erected the first real sole water facility, is that right?

A. Yes, sir.

Q. Judge Hayes commended you for the integrity and Stick-to-itiveness and apparently indicated that you had a lot of trouble at first in getting grain through by barge. Was that because the farmers were a little shy or these country elevators didn't cooperate with you then as they did now?

A. No, sir, I had no trouble from the time my elevator started operating until the river froze up; I had trucks lined up there very day.

Q. Had all the business you could handle?

A. More than I could handle.

Q. At that time, I wondered why you said you were struggling so hard and now you are successful and all that, but did you then deal with the farmers direct?

A. On a larger scale, on a little larger scale than I do now.

Q. Now, were those farmers chiefly those within five or ten miles of Morris?

A. No, sir.

[fol. 1801] Q. Where were they located, some of them?

A. They were located mostly over around my home, which is ten miles east of Dwight, where I was in the grain business with my dad before I came to Morris, over in what is called Blair.

Q. Those fellows followed you around there?

A. And around Wauponsee, I was there for a while, and those fellows followed me. That was my first business, you might say.

Q. When you opened up, you took with you certain business that was in your home town, and that was augmented by farmers nearby?

A. Nearby my home town? Oh, I get what you mean.

Q. Farmers nearby your new place of business.

A. Nearby my new place of business I didn't induce them to come into my place. I didn't know them, and the grain nearer town, nearer to Morris from the start was bought through the elevators.

Q. Through the country elevators?

A. That is right.

Q. All right. Now, were those country elevators that you first dealt with, are any of them now stockholders in the Cooperative Allied Grain Dealers Association?

A. Yes, sir.

Q. And you still buy from them?

A. Yes, sir, most of them.

Q. And what you do not buy now from those people, you [fol. 1802] are buying from other country elevator operators that are not stockholders in the Allied?

A. Yes, sir. Now, don't get me wrong. I stated that I buy some grain from farmers, in rare instances, and I don't want to try to retract that statement.

Q. Do you have control of any trucks?

A. No, sir.

Q. You haven't any under lease?

A. No, sir.

Q. Are there any trucks that are subject to your call?

A. No, sir. Only when they are hungry and want work; they are there to get work.

Q. What kind of work do you give them, if you don't control them or don't need them?

A. Tell them, "Nothing doing today."

Q. Are there any days when you do have something for them to do?

A. Yes, sir.

Q. Now, what is the nature of that? Is it because the farmer wants you to tell him where he can get a truck to haul the grain in?

A. Occasionally. Most of the nature of the trucks with us is transferring grain from our three other elevators to the river elevator.

Q. Yes. Well, then you do take grain in at these three [fol. 1803] other elevators, I believe there was one of them on the rail, the one at Morris?

A. Yes, sir.

Q. You take that in from farmers, whoever wants to bring it over?

A. Yes, sir. No, not by everybody who wants to bring it over. It has to come through certain sources.

Q. It has to come from the same source that you get the business that is shipped to you direct?

A. Right.

Q. Now, these other two little elevators, who do you deal with in getting the grain to them?

A. Same source.

Q. But after it gets into those three offside elevators, you yourself pay the transportation over to the water house?

A. Right.

Q. But the grain has been paid for in those three houses, it has been paid for on the same basis as if it was delivered in the first place to your river house?

A. Yes, sir.

Q. Now, I understand that—have you improved your elevator since 1934 any?

A. Oh, yes.

Q. In capacity?

A. No, sir.

[fol. 1804] Q. Merely in the handling of it?

A. Mechanics.

Q. Yes, mechanics; faster house?

A. Yes, sir.

Q. Handle more?

A. Yes, sir.

Q. Now, how far out would you say is grain trucked to your elevator, irrespective of who handles it? The grain that comes to your elevator, how far out do you think they truck it?

A. 45 miles.

Q. Isn't that a greater distance than was trucked in 1934, aside from your home town boys, now?

A. Well, I can't say—1930—the first of the year we got some grain from Chenoa, and I think that is about as far as we go now?

Q. Genoa?

A. No, Chenoa.

Q. Oh, Chenoa, on the Alton. Now, I understand that all the grain that you buy on these bids that you give to these

country elevator operators is sold to Chicago CIF terms?

A. Yes, sir.

Q. How soon after that grain is delivered in the Chicago elevators do you get your pay, as a rule? Two or three days?

A. Yes. When it is unloaded and the weights come up to Joe Schmidt's office. I get paid that day.

[fol. 1805] Q. Now, who contracts for the carriage of the grain from Morris to these South Chicago elevators?

A. I do. I do not contract for them. I ask for a barge to be placed when I want to unload it, but I tell them this, to leave one there all the time.

Q. You have got a standing order for a barge to be left there as soon as the loaded barge gets out, is that right?

A. Right.

Q. Is there room for loading more than one barge at a time from your elevator?

A. No, sir.

Q. When that spot is empty, you have got orders to drop in another barge?

A. That is right.

Q. Continuous movement?

A. Yes, sir.

Q. Now, with the exception of the improvement in your handling facilities, I am to understand there has been practically no increase in your business from the very start? That from the very start in 1934 up until now, you are working just as fast and handling just as much grain as is possible for your facilities to handle, is that right?

A. That is right.

Q. How many hours a day do you work your elevator?

A Sometimes twenty-four.

[fol. 1806] Q. Do you have three shifts?

A. Three shifts and a half.

Q. Do you buy solely from these country elevators on the bids that you get from Chicago?

A. No, sir.

Q. Do you sometimes set your own price to these country elevator fellows?

A. Depending on my judgment as a grain merchandiser, yes.

Q. Now, you, in cross-examination by Mr. Cole, talked as though you paid sometimes the ex-Northwest rate and sometimes the TM rate and sometimes some other rate from Chi-

cago. As a matter of fact, do you yourself pay any freight rate from Chicago to the East?

A. No, I do not. I didn't mean it in the way that I paid it. I meant it for the men who bought my grain had to pay it.

Q. Now, you said that one difficulty in taking away the reshipping rates would be that you couldn't hedge in the Chicago market. Now, when you buy grain from these country elevators, say today, do you yourself hedge that in the Chicago market?

A. Yes, sir. I either hedge it or sell it.

Q. All right. Now, we will say now that you bought it——

A. Yes, sir.

Q. And you haven't sold it?

A. Yes, sir.

Q. And you hedge it?

[fol. 1807] A. Yes, sir.

Q. When do you take off your hedge?

A. When it arrives in Chicago.

Q. All right.

A. And is unloaded, so we know the bushels and grades to settle for.

Exam. Taylor: Mr. Brown, just a second. All right, Mr. Brown.

The Witness: Wait a minute, Jack, until I see where we were here.

Mr. Brown: We were about to hedge.

The Witness: I don't want to get twisted up.

Exam. Taylor: Read the last question and answer.

(Record read.)

By Mr. Brown:

Q. Well, since you have quite a continuous and regular operation, one barge load is taken away and another drops in, and presumably the interval is not great between the two loads out, is there really much necessity for your hedge and do you do much hedging?

A. Yes, I do quite a bit of hedging.

Q. Under what conditions?

A. I very often bring the grain in here and pay storage on it and hedge it; and I have over 200,000 of room, and

naturally I don't let that go to waste if, in my judgment, I can fill the space and hedge it and make a carrying charge on it.

[fol. 1808] Q. Now, I think you said that country elevator from whom you bought was lucky if he got a cent a bushel. How can you know how much he retains out of the bid that you made him for his services?

A. Oh, I know what is paying the farmer, and I know about what his trucking charge is to Morris. I keep in pretty close touch with it.

Q. In other words, you are after him all the time and you are trying to bear down his compensation?

A. No, sir.

Q. To a cent a bushel?

A. Oh, no. No, I don't care what he buys it for. All I want him to do is to sell it to me. I want to get it, that is all.

Q. You want him to get it for you and you want to buy it?

A. That is right.

Q. But you don't know how much he keeps for himself?

A. Other than what they tell me, and I have checked with the farmers, what a certain elevator is bidding them, and I find that practically all the time they are getting a cent a bushel and a great many times a half a cent a bushel. The Allied are pretty tough competitors.

Q. I would say so, too. Now, in view of this explanation of how you do business, I would understand, except in rare occasions, you have no direct commercial contact with the farmers in your community?

[fol. 1809] A. That is right, Jack.

Q. You said you didn't contract for the carriage, or I understood you to say you didn't contract for it, except that you had a standing order for a barge to be loaded?

A. That is right.

Q. When that barge is loaded, isn't it your usual practice to just tell them to take it to somewhere and make out a bill of lading?

A. No, sir, we make out a bill of lading at our office.

Q. Signed by the captain?

A. Sometimes, and sometimes sent to Joliet to be signed by Mechling; sometimes sent to Chicago to be signed by Mechling when he comes in here; to the receivers, to the man who is receiving that certian barge of grain. The

lading may be sent to him awaiting Mechling's arrival there to sign it.

By Exam. Taylor:

Q. But it is a Mechling bill of lading?
A. Right.

By Mr. Brown:

Q. In other words, you make out the billing documents to state to what elevator it is to go in Chicago, and I suppose you make an estimate of the weight, and so forth?
A. That is right.
Q. All right, now, do you put a freight rate on that bill of lading?
A. No, sir.
Q. You leave that open?
[fol. 1810] A. Yes, sir.
Q. Who pays the freight charges, the Mechling towing charges, we will say?
A. They are paid by the buyer of the grain.
Q. At Chicago?
A. That is right.
Q. Including the rental of barges, if there is any such thing?
A. That is right. I don't know how he gets them.

By Exam. Taylor:

Q. How he gets the barges?
A. That is right; whether they are rented or what they are.

By Mr. Brown:

Q. Now, Mr. Finnegan, in all your career as a grain man, or as a shipper, or a buyer, did you ever complain to the railroads because ex-lake grain had a reshipping rate from Chicago different or more than the local rate from Chicago?
A. No, Jack, I didn't.
Q. Would you be perfectly satisfied if the railroads east of Chicago, in the matter of freight rates on grain brought into Chicago by barge that you sell to Chicago, treated that

exactly the same as they do bulk grain arriving at Chicago by the Federal Barge Line?

The Witness: You will have to read that.

Exam. Taylor: Read that question, Miss Reporter.

(Question read.)

By Mr. Brown:

Q. Irrespective of the origin of the grain that the Federal Barge Line brings in. That is just the detail end of it. [fol. 1811] You needn't answer that part of it now.

A. Wait, I just don't understand here.

Q. Here is what I mean——

A. Break it down a little, Jack. I can't follow it.

Q. I want to make it perfectly clear. You ship grain by barge in bulk up to Chicago?

A. That is right.

Q. There may be 15, 18, 19,000 bushels in that barge?

A. Yes.

Q. It is bulk grain, corn, for instance.

A. All right.

Q. The railroads want to charge you a certain rate east of Chicago.

Exam. Taylor: Not charge him; charge that grain.

By Mr. Brown:

Q. Charge on that grain a certain rate east of Chicago?

A. That is right.

Q. It doesn't make any difference what it is. We will say it is 15 cents to a certain place, and then grain in bulk, it may be corn, it may be wheat or something else, is also brought into Chicago by the Federal Barge Line from some place other than Morris. Would you be perfectly satisfied if your grain is trucked just the same, in the matter of freight rates, as that grain that is brought in by the Federal Barge Line to Chicago is treated east of Chicago?

[fol. 1812] A. Oh, absolutely. Sure.

Q. We are talking about bulk grain now.

A. Yes, sir. Surely. I would have more competition on the river then to bring my grain in.

Q. When you order a barge, do you order it from Mechling, the same fellow who does the towing?

A. That is right.

Q. You don't care whose barge it is or where he gets it?
A. No.
Q. Do you recall, Mr. Finnegan, whether in the protest that was filed by you and also by your attorney, Mr. Macaulay, you said that it has been the practice of yourself to turn back to the farmers practically all of the savings, substantially all of the savings resulting from the use of the Illinois Waterway. Now, I understand from that you meant the difference between, say, what it costs by rail to get it up to Chicago and what it costs to get it up by barge, is that right?
A. That is right, Jack.

Mr. Brown: That is all.
Exam. Taylor: Mr. Oliphant, any questions? (No response.) Any further questions on cross examination? (No response.) Any on redirect?
Mr. Macaulay: Just about two.

Rirect examination.

By Mr. Macaulay:

Q. Will you trace a shipment of grain that you sell to [fol. 1813] Chicago; supposing that that grain goes to Eastern destinations.
A. Yes, sir. We load it at Patonville. We pay our barge charge—well, I guess our total charges are about two and one-fourth cents.

By Mr. Taylor:

Q. You pay that where?
A. We will pay our barge and charges for unloading there and handling the barge, which is about——
Q. Where do you pay that?
A. It is deducted from the grain here in Chicago. We load it at Patonville and bring it to Chicago and then that is deducted. And we will say this grain is going for export. They are selling quite a bit of export grain now. That 30,000 bushels of grain can be loaded in freight cars and shipped to Baltimore, and as I recall it, that takes a 16 cent rate from Chicago to Baltimore when it is gonig for export. If it were going for domestic to Philadelphia, it would take 24½ cent rate.

Is that what you wanted me to do, Macaulay? I didn't understand——

By Mr. Macaulay:

Q. I am interested in knowing what happened to the bill of lading after it is sent by you to the buyer. Do you know what he does with it?

A. No, he takes it down there to the Traffic and Transit Bureau, or Traffic Bureau and has it recorded, I understand.

[fol. 1814] Mr. Enoch: Now, we are going to get the record all confused. Mr. Finnegan doesn't know what this receiver at Chicago does.

Exam. Taylor: Let's see if he does.

By Mr. Macaulay:

Q. Do you know what he does with the bill of lading?

A. Yes, he records it with the Transit Bureau there in the Board of Trade.

Q. And what is the effect of that recording, as you understand it?

A. He is entitled, then, to that many tons of corn, to take reshipping rates from his elevator to the East, or to the CFA territory under the reshipping rates as they stand now in Tariff 245 and 535.

By Exam. Taylor:

Q. Now, Mr. Finnegan, you said he takes the bill of lading, the bill of lading that you make out on the Mechling Barge Line's bill of lading. You said that he takes that bill of lading or the freight bill and has it registered?

A. I am sorry; it is the freight bill, Mr. Examiner. I am sorry. It is the freight bill that he registers.

Br. Mr. Macaulay:

Q. You stated that the freight rate was paid by the buyer. Is that freight rate, in turn, deducted against the price that you are entitled to receive for the grain?

A. Yes, sir. As I told Mr. Bell, I sell it all CIF, Chicago.

By Exam. Taylor:

[fol. 1815] Q. Do you know who makes out the freight bill?

A. Mr. Mechling, I think, makes out the freight bill. I can't say as to that.

Q. You are not sure?
A. No, I am not.
Q. We want facts.
A. I can't state that well enough to be a fact; well enough to put it there at all.

Mr. Macaulay: That is all.
Exam. Taylor: Does that bring up any further questions?
Mr. Belnap: May I ask a question, please?
Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. Mr. Finnegan, you answered Mr. Brown regarding your desire to have your tonnage coming into Chicago via waterway treated the same beyond Chicago as the tonnage of bulk grain brought in by the Federal Barge Line.
A. Yes, sir.
[fol. 1816] Q. That was the subject about which he inquired, was it not?
A. Yes. Beyond Chicago. He wanted to know if my tonnage—if I thought my tonnage should be treated the same as the Federal barge tonnage, yes.
Q. Now, if it should happen—he was asking you about bulk tonnage, was he not?
A. Yes, sir.
Q. Bulk grain?
A. Yes.
Q. Now, if it should appear that the Federal Barge Line has not handled any bulk grain on the rates which are specifically mentioned in the tariffs under suspension, so that if those tariffs did become effective, the bulk grain brought in by the Federal Barge Line would likewise be prohibited from moving on the proportional or the reshipping rates, would you still be satisfied to have your grain denied that privilege?
A. No, no.
Q. So long as it is maintained in connection with exlake and exrail tonnage?
A. No, no. I don't want—no, I wouldn't want it that way.

Mr. Belnap: That is all.
Exam. Taylor: Mr. Cole, have you got anything further?
Mr. Cole: Yes.

Recross-examination.

By Mr. Cole:

Q. Mr. Macaulay was just asking you, Mr. Finnegan, [fol. 1817] what the man who buys the grain from you does with the freight bill after he receives the freight bill. And what was it that you said?

A. He records it with the Transit Bureau.

Mr. Enoch: I think you said you didn't know. Didn't you finally say that?

The Witness: I finally said he did record it with the Transit Bureau. That is as far as I do know.

By Mr. Cole:

Q. And Mr. Finnegan, you said then that that registration of the freight bill with the Transit Bureau made applicable to that grain certain reshipping privileges, didn't you? Do you remember that when I was asking you questions on cross examination, prior to Mr. Macaulay's question, I asked you whether you were at all familiar with those regulations of the various tariffs east of Chicago. Do you remember my asking you that?

A. I told you I was familiar with CFA and the Trunk Line; familiar enough to know when it worked for me or when it worked against me, and when I have them before me I can—I am familiar enough then, but I am not nearly familiar enough to talk from memory.

Q. Is this the note that entitles you to the use of those rates——

Exam. Taylor: Now, what tariff are you speaking of?

Mr. Cole: I am showing Mr. Finnegan Exhibit No. 2, [fol. 1818] page 4, note 40 of that tariff, covering the application of reshipping or proportional rates on traffic originating in Northwest territory, note 40, and I am asking Mr. Finnegan if that is the note that entitles him to the use of the reshipping rates on his grain east of Chicago to destinations in CFA.

Exam. Taylor: This is the rate tariff?

Mr. Cole: Yes, sir. This is extracts from the rate tariff.

The Witness: Which tariff is this?

Mr. Cole: That is the CFA.

The Witness: CFA territory?

Mr. Cole: Yes.

The Witness: Now, wait. I have got to read that carefully.

Mr. Cole: That is all right, read that carefully.

The Witness: Now, is this the new one or the old one?

Mr. Cole: That is the present one.

The Witness: This is the present tariff?

Mr. Cole: The present tariff.

Exam. Taylor: Ready? All right, Mr. Cole.

The Witness: Yes, sir.

By Mr. Cole:

Q. That is the rule that enables you to use it?

A. Yes, sir.

Q. Now, out of Chicago to CFA territory, there are two sets of proportional rates, one set that is three cents lower to destinations in CFA territory when the grain arrives in Chicago from Trans-Mississippi territory, and another set [fol. 1819] of proportional rates east of Chicago on grain that gets into Chicago from Northwest territory. That set of proportional rates is 3 cents higher than the trans-Mississippi proportional rates. Are you familiar with that fact?

A. Yes, sir.

Q. When you go east of Chicago to CFA territory, under those rules, which set of proportional rates do you use, the ex-T.M., or the ex-Northwest?

A. The ex-Northwest.

Q. Are you sure, Mr. Finnegan, that you use——

A. Now, you are talking about going into CFA territory?

Q. Yes.

A. With the billing dying there, not going beyond?

Q. No.

A. You are not going to run this into Trunk Line billing?

Q. No, sir.

A. You are going to stop it here in CFA?

Q. Yes, sir.

A. All right.

Q. Now, are you sure that you actually use that proportional rate applicable to ex-Northwest traffic from Chicago to the CFA destination? That is the rate you use?

Mr. Macaulay: I object to the word "you use." He said he didn't use any out from Chicago. His buyer might but he didn't.

[fol. 1820] By Mr. Cole:

Q. That is the rate you are sure is used?

A. I can't say that I am sure it is used always. It is used some of the time.

Q. Well. do you know the circumstances that would prevent its use?

A. No, unless the buyer of this CFA—buyer of this grain in the CFA territory would rather have billing that he could bill beyond. I don't know why he would use it unless he would want it the other way.

Q. I don't understand you there, Mr. Finnegan. If he had billing--what do you mean, if he had other billing that would entitle him to other use? Do you mean to say if that buyer or if that grain dealer happened to have on hand in his office billing on grain that got into Chicago from Trans-Mississippi territory, that that buyer might be able to use the still lower proportional rate that was 3 cents lower than the ex-Northwest proportional rate, if he cancelled that billing from the ex-T.M. territory?

A. No, I don't think he can apply one against the other.

Q. Oh, now wait. If he had billing in his office covering movement from Trans-Mississippi territory and he was selling, say, to Cleveland and Cleveland took a 3 cent lower proportional, if he had that billing from Trans-Mississippi territory, would the man have the choice, then, of surrendering that Trans-Mississippi biiling and getting that 3 cent lower rate?

A. Now, Mr. Cole, I can't answer that. The only thing—[fol. 1821] the only answer I can give to these tariffs—I don't know what the buyer at Chicago does with them. But I know I used them in a few instances and I know what I done with them. I know the ones I applied.

Q. What did you apply?

A. I applied the Trunk Line territory. I never did apply CFA territory. But I do know we are considered as arriving under Northwestern classification, under note E.

Q. You figure that your grain is arriving from Northwest territory when you have applied to that grain the proportionals east of Chicago, is that correct?

A. That is what I figure. That is what I am given to understand.

Q. Now, do you know whether the grain that moves east of Chicago under this note 40 to CFA destination, do you

know whether there is at any time an attempt to set up and protect the payment of through charges on that grain that at least equals the level of the local rate from Chicago to that CFA destination?

A. No, sir, I can't answer you that question.

Q. You don't know whether that is protected or not?

A. Wait a minute. No, I can't answer you right so I won't answer it.

Q. Have you had any connection with this so that you know whether any shipments of your grain, any grain that [fol. 1822] you have sold to your buyer, has gone into CFA territory after you sold it to him?

A. Oh, yes.

Q. Has your buyer ever suggested to you in the slightest degree that the terms or arrangements by which he must operate into CFA territory presents any problem to him in the way of discounts or price impediments or features of that nature?

A. Yes. CFA under Northwestern is higher than CFA territory under Illinois and Iowa.

Q. And Southwest?

A. Well, I don't know about Southwest. I am not—I don't have anything to do with T.M. billing, so I don't know anything about it.

Q. Now, when you go to Trunk Line Territory, do you also use the ex-Northwest proportional?

A. No, sir.

Q. What do you use when you are going east of Chicago, which proportional?

A. The Illinois and Iowa.

Q. To Trunk Line territory?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Now, when you have considered with your buyer the problems that he has from a price standpoint and a dis- [fol. 1823] position standpoint, has he told you that he has any difficulties from any source, this water grain against some other grain that is in here, so that he desires your grain or indicates that those things have an influence on the price that he can pay you for your grain?

A. Oh, no. I don't believe he has ever—now, wait a minute. I will answer that to the absolute best of my knowl-

edge. I don't know what you are trying to bring out but maybe it will help.

Q. Thanks.

Mr. Macaulay: Would you read that last question, Miss Reporter?

Exam. Taylor: Yes, read the question.

(Question read.)

Mr. Macaulay: It is awfully involved.

The Witness: I understand it. Yes, there are times, Mr. Cole, when the demand is in certain places that the barge grain doesn't work to so well.

By Mr. Cole:

Q. Well, Mr. Finnegan, are you sufficiently close to that situation so that you would understand it to the degree necessary to explain it to us?

A. If you will tell me whether you are trying to bring out that exception in tariff 535 made to Illinois grain three or four years ago, is that the point you are leading up to?

Q. No, Mr. Finnegan, not back three or four years from [fol. 1824] now. I would rather have it just considered at the present time without the consideration of these changes that we are proposing. I want to know how it works right now; if there is any impediment in this stuff over Trunk Line territory and whether they have told you that other influences affect the prices.

A. There is no impediment over Trunk Line territory.

Q. Not now?

A. No, sir, but there is into CFA territory some impediment.

Q. Now, the CFA territory, I understood you to say that the difference is brought about by there being two levels of proportional rates east of Chicago, isn't that correct?

A. That is correct. Now, can I ask you a question?

Q. Yes, sir, if I can clear up anything.

A. What is the difference between the Illinois-Iowa grain and the northwest grain on the outbound rate into CFA territory?

Q. Now, just a minute, I will have to find out.

Mr. Macaulay: Mr. Cole, are the questions you are asking for the purpose of impeaching him? If they are, I think he stated he wasn't an expert on tariffs; that he knew how

they affected him. If, on the other hand, it is a matter of interpretation of the tariffs, I think you ought to have your railroad man; in a complicated question that you yourself have to ask Mr. Brown.

Mr. Cole: He asked me a question and I am getting the information for him. Mr. Examiner, do you want me to [fol. 1825] reply to this objection?

Exam. Taylor: You didn't make that as an objection? He was making that as an explanation, as I understand it.

Mr. Macaulay: I was asking you whether you were doing it to impeach the testimony or whether you wanted to find out about your tariffs.

Mr. Cole: I am trying to get Mr. Finnegan to give us an explanation of his position and things that he understands affects his position; and on direct, he went very thoroughly into his position, and now I simply want to see the things that are back of that and to be sure that Mr. Finnegan understands the things back of that the way I have been led to understand them. I want to see whether his understanding is correct or my understanding is correct.

The Witness: If you bring these things to me, I can understand it all right.

Mr. Cole: We are getting along all right, Mr. Macaulay. I think Mr. Finnegan understands me.

Exam. Taylor: By "these things," he means tariffs.

Mr. Cole: Off the record a minute.

Exam. Taylor: Yes, sir.

(Discussion outside the record.)

Mr. Cole: Could I go back to the question that I asked Mr. Finnegan before he asked me a matter of information?

Exam. Taylor: Read the question, Miss Reporter.

[fol. 1826] (Record read.)

By Mr. Cole:

Q. Now, you have gotten the information that you asked me for. Now, from that did you want to change your answer to my question, Mr. Finnegan?

A. I don't believe so, Mr. Cole. You can bring it out farther.

Q. I think I asked you and I believe you said that you weren't sure enough about it to answer me. I want to be

sure on this point. When the grain goes to CFA destinations from Chicago, does the grain have to pay enough of a proportional rate level so that the inbound transportation cost to Chicago plus the application of the outbound proportional rate would total the local rate from Chicago to the CFA destination territory?

A. Well, sir, I don't believe it pays it.

Q. You don't think it pays that?

A. I don't.

Q. And so far as you have been in contact with your purchasers, you have not been informed of any such requirement as that, have you?

A. That is correct, I have not.

Mr. Cole: Well, I think that is all I have; thank you.

Exam. Taylor: Any other questions?

Mr. Cole: May I ask a further question?

By Mr. Cole:

Q. You still have that tariff in front of you, don't you?

A. Yes.

[fol. 1827] Q. Now, under which provision in this rule do you contend that your privilege is shown to use that ex-Northwest level on your grain?

Exam. Taylor: You are still talking about rule 40?

Mr. Cole: I am still talking about rule 40 as shown in Exhibit No. 2, page 4.

The Witness: Provision on shipments which arrive by boat lines at Chicago.

Q. Have you considered the whole terminology of that rule and is there anything in the tariffs that refer to that rule, that refer to the rule in part, or do those rate tariffs refer to just the whole route, "see note 40."

A. Wait a minute. Do you mean is there any more of this——

Q. Yes, for instance the first part of this rule says, "Rates applying as reshipping or proportional rates on traffic reaching the reshipping point via rail or water transportation that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in Northwest territory." Now, how do you apply——

Mr. Macaulay: Parson me. You ought to read the rest of that sentence, "As described below."

Mr. Cole: Yes, "As described below." It says, "Originates in Northwest territory as described below."

Mr. Macaulay: "Or as otherwise stated."

[fol. 1828] Mr. Cole: "Or as otherwise stated."

By Mr. Cole:

Q. Now, what portion of that—where do you eliminate the Northwest territory as a requirement?

Mr. Macaulay: I think that should be left——

The Witness: Where do I eliminate it? I don't eliminate it.

Mr. Cole: Thank you.

The Witness: On stuff coming in. That has always been a question in my mind but I am not good enough to go into that.

By Mr. Cole:

Q. But in your mind, you don't eliminate it?

A. No.

Q. And that is a fair statement, isn't it?

A. Yes.

Mr. Cole: Thank you. That is what I was trying to get from you, just your understanding.

Exam. Taylor: Off the record.

(Dicsussion outside the record.)

By Exam. Taylor:

Q. Now, this rule 40 that you have been reading from also states that, "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission," so this tariff is governed by some further rules?

A. Yes.

Q. That is to say, the transit rules, and isn't all of your traffic that moves by barge from Morris or your shipping [fol. 1829] point there to Chicago transferred in Chicago?

A. Oh, yes.

Q. There is no way of shipping by barge to Chicago and transferring the corn or grain from the barge direct to cars, is there?

A. No.

Q. It must go through the elevator?

A. It must go through the elevator.

Q. And in that sense, it is transferred at Chicago?

A. That is right.

Q. Then the rule 40 that we have been reading from must necessarily be subject to the transit rules, whatever they may be and wherever they are published?

Mr. Belnap: Well, Mr. Examiner, we had a witness for respondents who stated just the contrary. He says that the rate tariff provides all that is necessary for the application of the rates.

Exam. Taylor: I am reading from note 40 that they were talking about.

Mr. Belnap: It says, "Subject to other tariffs." That is subject to classification.

Exam. Taylor: "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission."

Mr. Belnap: That is correct, but I would like to have Mr. [fol. 1830] Tannehill back on the stand to explain what the transit rules are that would affect that application, because I was interested in getting that clear on the record. I thought that after we had finished with him the first day this week, he finally came to the conclusion that the Lake Erie ports, including Buffalo and Chicago, the lake tariffs themselves contained all that was necessary for the application of rates.

Exam. Taylor: That is true, but that should be on brief.

Mr. Belnap: We didn't go further into the tariff, or at least I didn't, as to the transit rule.

Exam. Taylor: The reason we didn't is because we didn't have it to refer to as we have it now, direct on the record, as to note 40.

Mr. Cole: The Examiner does now have before him the rule that is applicable east of Chicago.

Mr. Belnap: That is in an exhibit. That was in the record the first day of this hearing.

Mr. Cole: Yes. That rule that the Examiner just read to us does connect its application up with the transit tariff

that is effective in Chicago, which transit tariff has already been referred to and is in the record. When the witness introduced that, he said that the same provision, the same necessity for a transit tariff, the same reference to a tran-it tariff was not effective from the other Lake Erie ports today; that it did not connect up with any transit tariff east [fol. 1831] of those Lake Erie ports.

The Examiner now has before him and we are considering just what is effective east of Chicago. We are not considering the way, the manner in which it is worked out from those eastern ports.

Mr. Belnap: Well, he said that as to a transit tariff, then he came to the question of the application of a reshipping or a proportional rate.

One difficulty in talking about transit, using the term very generally, is that we are apt to confuse the operation of transit under a single-factor through rate with what we mean when we apply the same term to a movement on a combination of factors, that movement being temporarily interrupted at the point where the combination makes. We do talk about that latter as a transit movement. It has an entirely different character than a transit on a joint through rate. And I took it from Mr. Tannehill, when he finally got through, he was talking about a transit on joint through rate as distinguished from the reshipping proposition; because obviously, the grain at a Lake Erie port also goes through an elevator, and if you have got to have a transit rule in order to make the rule applicable, there will be like necessity there.

Mr. Cole: You don't have to have a transit rule to make it applicable and Mr. Tannehill was very thorough and complete on it.

Mr. Belnap: I thought he was too.

[fol. 1832] Exam. Taylor: Now, Mr. Belnap, if you are drawing a distinction between reshipping rate and proportional rate, this very note 40 starts out, "Rates applying as reshipping or proportional rates".

Mr. Belnap: Oh, no, I make no distinction. Those two are in exactly the same category. They are the rates which the carrier from the reshipping or proportional rate point holds himself out as willing to apply on traffic originating from beyond. They are on precisely the same basis.

Exam. Taylor: I think we have gone far enough on that, and we can argue on brief.

Mr. Belnap: I can't argue on facts that aren't in the record, except by the general statement that there must be some connection on the transit tariff in order to make them applicable. I have a witness who says that isn't necessary. Now it is discovered that there is a provision in the very note which says you have got to do something, and I would like to have Mr. Tannehill here to straighten that out, if it isn't straight on the record now.

Mr. Cole: Of course, as we explained to all members present last Saturday, I asked special permission to put Mr. Tannehill on Saturday morning, because he had an engagement that would hold him this complete week at Cincinnati; and I am sure all the facts, in connection with the facts that Mr. Belnap now considers and the uncertainties [fol. 1833] that Mr. Belnap contends are in his mind about this thing, have been clearly covered in the record.

Mr. Belnap: By whom?

Mr. Cole: By Mr. Tannehill when he was on and your questions of Mr. Tannehill.

Mr. Belnap: I thought it was clear too, but now the Examiner says, "Here is a new fact" and says, "You can address yourself argumentatively on brief." I can't argue about something when I don't know what the fact is.

Mr. Cole: No, the Examiner just simply referred to a note in that tariff covering the Chicago situation and it is covered completely and solely in Mr. Tannehill's example.

Mr. Macaulay: Shouldn't we have a copy of that tariff in the record?

Exam. Taylor: No, it is unnecessary. Tariffs are always available; this tariff that is in issue here.

It seems to me, Mr. Belnap, that your difficulty is in recognizing that the rule, recognizing, whether the rule is clear or ambiguous. We are talking about note 40. If it is ambiguous, it needs clarification. If it isn't ambiguous, it doesn't need clarification. If it is clear on its face, it is a lawful tariff and lawful rule.

Mr. Belnap: I think it is clear on its face. Now, when he comes, however, to a transit rule and a witness, so Mr. Cole thinks, at some other point where we have rates conditioned [fol. 1834] on a prior water movement, there is no necessity for a transit rule—that is where I get lost in the subject. At both places, as Mr. Tannehill explained, they go through

a transit house, a house which handles through all-rail grain as well as the grain which has had a prior transportation by water and subsequently by rail; and I confess to you, I am completely ignorant as to what the situation is in the light of what Mr. Cole and yourself now say.

Exam. Taylor: I think this whole thing is highly argumentative, and the place to argue the point is on brief.

Mr. Belnap: I am not worried about the facts; I am trying to find out what the facts are.

Exam. Taylor: The facts are as stated in this record. If they haven't been brought out, I say they should be.

Mr. Belnap: It is unfortunate, at the time I had this under discussion with Mr. Tannehill, we didn't ask him, why do you have to have a transit rule at Chicago governing such a situation where, under identical circumstances with relation to carriers and at a transit house, you don't have a rule at Buffalo?

Mr. Cole: Off the record a minute?

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Would you state that for the record?

Mr. Cole: Listen to it and see if I get it straight. Jack, [fol. 1835] will you be sure I get this straight and correct me.

Mr. Brown: If you are going to say that the tariff in Toledo is complete in itself and covers the transit and the policing as well as the application of the rates, I am going to say you are wrong. I can't agree to that.

Mr. Belnap: I think he is wrong too. Let's be off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Very well, we will adjourn at this time until 1:30.

(At 12 o'clock noon, a recess was taken until 1:30 o'clock p. m.)

Afternoon Session

1:30 p. m.

Exam. Taylor: Come to order, gentlemen. Now, Mr. Brown, I believe you have some tariff references?

Mr. Brown: Yes, I have been able to obtain reference to Agent Jones' transit grain tariff at Toledo, Ohio. It is his ICC No. 3240. Now, at Buffalo, New York, in connection with the ex-lake rate, I have reference to the Pennsylvania individual tariff, which is number, ICC No. 2065.

Mr. Belnap: Mr. Examiner, may I make a statement regarding this general proposition of transit tariffs?

[fol. 1836] Exam. Taylor: Yes. It is in an endeavor to clear up the record, isn't it?

Mr. Belnap: Yes, to make a request as far as the issues of the case are concerned.

I appreciate that in every rate case before the Commission, whether it rises on formal complaint or an investigation and suspension proceeding, there is available to the parties issues under section 6, if either they or the Commission desire to raise them. The legality of rates in this proceeding, so far as the ex-barge grain involved is concerned, the respondents have under their present tariffs, whether they be rate tariffs or transit tariffs or what not, have been applying the reshipping and proportional rates, and they have come to the Commission with a proposal to discontinue that application, asserting, however, that it is the present application.

In very general words, I think I have heard counsel, perhaps Mr. Enoch, say that he differed with the principal witness of the respondent as to the application of tariffs. Neither he or any other party, however, has distinctly raised any question as to section 6, although I think perhaps you and I have heard just general comments about it off the record; some of them at the conclusion of this morning's session.

[fol. 1837] Counsel in briefing the case necessarily desires to direct his attention to every issue which the Commission may be called upon to decide, and he can't be very helpful to the Commission unless he does know the issue and precisely how it is raised and how it is to be presented, and for that purpose I am now formally requesting anyone who is a party to this case, who will on brief raise any issue as to the legal application of the reshipping or proportional rates on ex-barge traffic, to do sufficient now to explain what the issue is, on what it is based; and that brings me to say one thing about the matter of having transit tariffs a matter of record, either simply

because they are in the Commission's file or because they have been mentioned by number here.

It is not inconceivable that what order the Commission enters in this case might be taken to court. If the findings and orders of the Commission are in any part predicated on tariff provisions which are not a part of the record, physically a part of the record, either by the tariff being put in or excerpts from the tariff being put in, the court would not be in a position to pass upon the legality of the Commission's findings. Consequently, it seems to me that any finding or order which the Commission may make which would be predicated on the words in the tariff, we should have the tariff itself made a part of the record.

Exam. Taylor: Now, as I understand it, then, you re-
[fol. 1838] quest that any party having the viewpoint that the rate tariff which is under suspension in this case is bound by any other tariff, particularly the transit tariffs, is requested to furnish the item numbers of that transit tariff which he asserts is involved in this proceeding?

Mr. Belnap: The items themselves as a matter of exhibit in the proceedings; the latter on the ground that if the case does go to court, it will be necessary to have that as part of the record, in order for the court to properly deal with the findings of the Commission, if such findings are in any part predicated on something not a matter of record here.

Exam. Taylor: Mr. Enoch, have you a reply to make to that?

Mr. Enoch: If the Examiner please, I think I said on the record here in the early part of this proceeding that my contention was that on this ex-river grain, considering the manner in which it has been handled from origin to Chicago, the tariffs of the eastern lines—and I refer to those because there were no other tariffs—did not permit the application of true proportional rates to that grain; and I think I further said that it is our position that there was no way, by tariff provision, that the eastern lines could arrange to handle this grain which is the subject matter of this investigation eastbound out of Chicago, on any other than the regular going local rate. If I didn't say that, I want it to be understood that that is our posi-
[fol. 1839] tion now.

Mr. Belnap: I would like to inquire, Mr. Examiner, on what the position is predicated.

Mr. Cole: Mr. Examiner, may I make a statement?

Exam. Taylor: Certainly, Mr. Cole.

Mr. Cole: It seems to me that we have the usual and customary I & S proceeding here. We have certain present tariffs that are presently effective and those tariffs have been made a part of the record.

Exam. Taylor: Not physically but by——

Mr. Cole: Physically.

Exam. Taylor: Physically?

Mr. Cole: Physically. Then we ha e certain changes that the carriers propose to make in those tariff rules, and those changes have been physically made a part of the record.

The protestants have claimed that under the present tariffs, they have been able to do certain things. They claim that under those tariffs as at present in effect, certain privileges have been extended to them. Yet in spite of that claim, in the face of that claim, notwithstanding that claim if you prefer, we still have the ordinary I & S case. We have got the tariffs provisions here that are presently effective, and they are in the record. We have got here the things that we propose to do that will change those tariff provisions, and we have had our witness explain the [fol. 1840] purpose of those changes, how that wording will read under the new application, and if it develops through the case that the people who have been dealing with the tariffs in the past have misconstrued the plain terms of a presently published tariff, certainly I can't see what we could do that would any more forcibly bring that to the attention of the Commission in an I & S case. We are trying to make a change and there it is, the present and the future.

Exam. Taylor: Well, Mr. Cole——

Mr. Cole: Yes.

Exam. Taylor: You have in exhibit 1 excerpts from Jones' ICC 3300. That, as I understand it, is the rate tariff?

Mr. Macaulay: Is that exhibit 1 or exhibit 2?

Exam. Taylor: That is exhibit 2.

Mr. Cole: Exhibit 2? That is the present.

Exam. Taylor: That carries the note 40 that we were talking about before the luncheon recess.

Mr. Cole: Yes, sir. That is the present. That represents one of the tariffs. In all, there are four tariffs that are to be changed by the same changes.

Exam. Taylor: They are all Jones' tariffs; ICC 3047, 3055, 3272 and 3300. But those tariffs, as I understand it, are in turn governed by a transit tariff, and up to the present time the transit tariff has not been incorporated in the record, physically.

Mr. Cole: The Chicago transit tariff you refer to?

[fol. 1841] Exam. Taylor: Yes, Jones' ICC 3204.

Mr. Brown: Mr. Examiner, I want to raise the question, has anyone here taken the position that the transit tariff itself must be changed in order to effect the cancellation of these reshipping rates that are taken out under the suspended supplements? If no one is raising that position, it isn't necessary, in my opinion, to put in physically the transit tariff, because there is no change in it.

Exam. Taylor: Now, Mr. Enoch's objections might come under the transit tariff, as I see it.

Mr. Belnap: I don't understand that it does. I appreciate the possibility of that, and that is what I would like to have him define.

Mr. Enoch: I think, so far as we are concerned here, Mr. Belnap is in his right in asking to be informed as to the tariff items on which we rely in support of the proposition that the outbound rates that have been applied on this grain from Chicago are not applicable, and I will endeavor to give of record those tariff items, and if the tariffs are not all in evidence, we will supply those items in other tariffs that are on file with the Commission which we think are pertinent and will depend upon——

Exam. Taylor: Could you do that by tomorrow morning if you got in touch with your office right away?

Mr. Enoch: I will do the best I can. I don't want you [fol. 1842] to hold me to that too strictly. I will get them as quickly as possible.

Exam. Taylor: I would like to have them before we close the case.

Mr. Enoch: Oh, yes, of course.

Mr. Cole: Mr. Examiner, I now have here the Chicago transit tariff ICC No. 3204, with the presently effective supplements——

Exam. Taylor: What are their numbers?

Mr. Cole: Nos. 17 and 15, and if the parties are interested, as they have expressed themselves in having a copy of this tariff physically a part of the record, I would like to now offer in evidence a copy of this tariff and we will get for anybody who request it a copy. If anybody requests it of me, I will have them mailed a copy.

Exam. Taylor: Will that comply with your request?

Mr. Belnap: No, Mr. Examiner, because there is a transit tariff which covers a great many situations. Probably very few of the rules and regulations pertain to a matter which we have under consideration. Some of them may be in general language, so that there would be a question whether that pertained to the situation which was here involved, and I wouldn't want to have made a part of the record the whole tariff unless there is a specification of the tariff items on which someone relies, if anybody does so, in support [fol. 1843] of the proposition either that there is no change in rates or that in any respect there has been an improper application of the proportional or reshipping rates in the past. I understand Mr. Cole doesn't take that position. His witness said that he construed the tariffs as making the proportional rates, reshipping rates applicable.

Mr. Day: I didn't so understand.

Mr. Cole: We didn't cover that point at all.

Mr. Belnap: Mr. Tannehill.

Mr. Cole: Mr. Tannehill didn't have any occasion to touch upon that.

Mr. Belnap: I asked him the question and that is the answer he gave me.

Mr. Cole: He didn't cover that point you referred to, Mr. Counsel.

Mr. Macaulay: Don't you think we had better wait? Maybe Mr. Enoch would like to be in on some of this. He is on the phone.

Exam. Taylor: Yes.

(Short intermission.)

Exam. Taylor: Now, Mr. Belnap, I will call your attention to exhibit No. 37, which showed the transit record outbound, on one of the shipments that we referred to.

Mr. Belnap: Yes, I recall that exhibit.

Exam. Taylor: At the foot of that paper, it says, "Shippers' certificate. This is to certify that the billing listed

[fol. 1844] under inbound is applicable to the commodity forwarded, as provided in CFA RR Tariff No. 413-K, ICC 3204."

Mr. Belnap: That is correct.

Exam. Taylor: That necessarily means that it complies with every single rule that may be applicable in that tariff.

Mr. Belnap: Which may be applicable, and to the best of my knowledge, no one in this case has raised any question as to the non-compliance with any of the rules; not a single soul has raised any question, so it would be quite a burden to try to go through that whole tariff with no issue involved as to it.

Mr. Cole: Now, if I may be permitted to make a statement right there, I have contended right from the start of this case that there was no issue here referring to anything in this tariff; that it simply covered the policing regulation. Yet we received all sorts of little innuendos as to the necessity of having this tariff in the record, that it may have something in there—that is the words, I am using their words—that there may be something in that tariff that would affect our issues. I say there isn't, but in order to cover that innuendo and prevent that from creeping into this case any more from now until this case is finally decided, I don't care where it goes, to the Supreme Court, I have offered to put the matter in as an exhibit and I think that in view of the statements and the certifications that it complies with this thing, whatever those policing requirements are; that I should be permitted to put the [fol. 1845] whole thing in without trying to delineate any particular thing that may apply to this, that and the other thing, because the rules are clear and it is not very big.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: I think that I should receive this transit tariff, B. T. Jones' ICC 3204 and the present effective supplements, being Nos. 15 and 17 in evidence in this case, and that in order to meet the position of Mr. Belnap, Mr. Enoch is agreeable to supplying later in the record the particular items in that tariff upon which he relies in taking the position that he takes.

Mr. Enoch: That is correct.

Mr. Belnap: Is it to be understood, except that as to the items to which he calls my attention, no part of the tariff is to be considered in evidence?

Exam. Taylor: How? Read that, please.

(Record read.)

Exam. Taylor: I don't know about that. In view of the statement on an exhibit from which I have already read, I don't think it could be limited to that. But so far as Mr. Enoch is concerned and his position it might be so construed.

Mr. Belnap: Am I to understand that he is the only who takes the position that there is any question as to the legality of the application of these proportional or re-[fol. 1846] shipping rates to ex-barge traffic in the past?

Mr. Day: That is an entirely different question. We all agree with Mr Enoch on that.

Mr. Belnap: I should think Mr. Day could speak for himself, but there are forty people in the room and I doubt if he could speak for all of them.

Mr. Day: You wanted your clients to announce their position, is that it? I assume you are talking to one side of the case and we are talking to the other.

Exam. Taylor: Do you agree with that, Mr. Cole?

Mr. Cole: I would rather not, for this reason, if there is some evidence in the record and I put that in, the whole tariff, I would like everybody, not only myself, I have explained my position several times, but everybody to have free access to everything there may be developed in that tariff or from that tariff, no matter what it might be, Mr. Examiner.

Mr. Belnap: Mr. Examiner, that certainly complies with the requirement I mentioned as to making a proper record going to the court, if that happened in this case, but it certainly doesn't meet the practical question, with what issue am I confronted in this proceeding?

Exam. Taylor: Well, it does comply with the requirements of law, doesn't it?

Mr. Belnap: That it is a matter of record?

Exam. Taylor: No, as to its being the lawful rate. The [fol. 1847] lawful rate is the published rate.

Mr. Belnap: There is no question about that.

Exam. Taylor: This will furnish that information.

Mr. Belnap: Except that everybody agrees it hasn't anything to do with that subject.

Exam. Taylor: Well, the agreement, as far as Mr. Enoch is concerned, he is willing to give you the items to which he will refer.

Mr. Belnap: That is fine, as far as he is concerned. Now, is there anybody else who thinks that there is anything in that transit tariff which has anything to do with the application of rates?

Mr. Brown: Yes, I do.

Mr. Belnap: Will you call my attention to the items too, Mr. Brown?

Mr. Brown: Yes. I would want that tariff, since it is introduced, to be a part of the record in this respect, that before any Chicago shipper of barge grain has been able to get the benefit or get the reshipping rate by rail, he had to comply with the terms of that transit tariff; and I therefore don't want it thrown out except as to the items that may be raised by Mr. Enoch.

Exam. Taylor: I think we have progressed sufficiently in that.

Mr. Belnap: I would like to ask at this point——

[fol. 1848] Mr. Day: May I make a statement?

Mr. Belnap: I would like to make one request.

Exam. Taylor: Mr. Day.

Mr. Day: So far as this transit tariff is concerned, I don't know what it contains and I am not particularly concerned at the moment with what it contains, but I do say that to confine the application or non-application of these rates to the barge traffic, you have got to look at the contents of the tariffs as exhibited in Respondents' Exhibits 1 and 2, and I say that in those provisions, there certainly is ample restriction against the use of these reshipping rates to barge grain originating in the state of Illinois.

Mr. Belnap: Now, I would like to know what Mr. Enoch refers to, if he can specify it.

Exam. Taylor: He has agreed to furnish you that information later.

Mr. Belnap: I should say Mr. Day refers to, if he would specify it for me.

Mr. Day: Yes, Rule 40 and Rule 20.

Mr. Belnap: Any particular provision in them?

Mr. Day: You will notice, Mr. Belnap, that the Rule 40, that you have got to read the entire rule in determining the application of any rate; because reference is made in one section or another to rates, or another subject to this note. You can't just pick out some particular line in that [fol. 1849] note and say that that is the thing that determines it. You have got to read the entire note in the light of the description of Northwest Territory as indicated in the tariff.

Mr. Belnap: Might I inquire if Mr. Day is speaking for the New York Central only or for all respondents?

Mr. Day: I am speaking here as attorney for at least the respondents that are active in this case.

Mr. Belnap: I think I am entitled to some specification in that.

Mr. Day: Well, you heard Mr. Garrison's comment back here a minute ago. I don't know whether I am authorized under the circumstances to say that the Pennsylvania Railroad will go along with what I say.

Mr. Belnap: But you do speak for the New York Central?

Mr. Day: I have been speaking for them for 31 years, Mr. Belnap.

Mr. Belnap: And it is your opinion as counsel for the New York Central that the proportional and reshipping rates heretofore applied on ex-barge grain were illegally applied?

Mr. Day: That is what the tariff says.

Mr. Belnap: I mean, it is your opinion?

Mr. Day: Yes, yes.

Exam. Taylor: All right, now. B. T. Jones' Tariff ICC 3204 will be received as exhibit No. 62. Supplement 15 to the same tariff as exhibit 62, Part 2; Supplement 17 to the [fol. 1850] same tariff as exhibit 62, Part 3.

(Exhibits 62, Parts 1, 2 and 3, received in evidence.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Let the record show that Mr. Cole will furnish any party that desires copy of exhibit 62, and that he will furnish the Examiner with exhibit 62 and parts thereof.

Mr. Cole: May I understand, Mr. Examiner, that I only need furnish that for the people who ask me for it at this hearing now?

Exam. Taylor: That is correct. Will everybody stand that wants a copy of this right now, to settle it. Mr. Macaulay, Mr. Root, Mr. Belnap, Mr. Brown, Mr. Enoch.

Mr. Cole: Now, I have Mr. Enoch, Mr. Macaulay, Mr. Root, Mr. Brown and Mr. Belnap.

Exam. Taylor: That is all that stood up.

Mr. Cole: And the Examiner.

Exam. Taylor: Now, gentlemen, are you ready to go forward with the examination of the witness?

Mr. Macaulay: I understand that everybody concluded except for that question you asked about the transit.

Exam. Taylor: Have you concluded your examination of the witness, Mr. Cole?

Mr. Cole: Yes, sir.

[fol. 1851] Exam. Taylor: Mr. Day, do you have anything?

Mr. Day: No, sir, I have nothing.

Exam. Taylor: Mr. Brown, have you anything else of this witness?

Mr. Brown: No, sir.

Exam. Taylor: Mr. Enoch, have you anything further?

Mr. Enoch: Nothing further.

James F. Finnegan recalled, previously sworn, testified further as follows:

Direct examination.

By Exam. Taylor:

Q. Now, Mr. Finnegan, on the average, how many barges do you ship up to Chicago a week? Just on the average?

A. I would say three barges a week.

Q. Three barges a week?

A. Yes.

Q. Those barges are loaded from your elevator?

A. That is right.

Q. And what is the name of that town?

A. Patonville.

Q. The south side of the river, across from Morris, Illinois?

A. Right.

Q. According to the record as it stands, the bill of lading is executed on a form furnished you by the Mechling Barge Company?

A. Right.

[fol. 1852] Q. You make that out?

A. We fill in the tonnage that is on it, where it is billed from, from Patonville, and who is shipping it.

Q. Who is shipping it?

A. That is right.

Q. Who is shipping it?

A. The Finnegan Grain Corporation.

Q. The Finnegan Grain Corporation?

A. And who it goes to.

Q. But you don't put it in the record?

A. No, we don't.

Q. Now, that weight that you put in this bill of lading, you put it in the form of a weight or as the number of bushels?

A. No, as the number of bushels.

Q. Number of bushels?

A. That is right.

Q. The accurate weight could not be determined until the outbound weight is taken at the elevator in Chicago?

A. That is right. We could by taking more time weigh into the barge and know exactly what was in it.

Q. Now, shipping three barges a week, I would think that you would be pretty well familiar with the whole transaction and that is why I am going into this thing. You have been up with some your barges, have you? Have you gone up to Chicago on some of your barges?

[fol. 1853] A. I never have. Your Honor, I never have.

Q. You have been in Chicago when they have been received?

A. Yes.

Q. Do you know who makes out the expense bill?

A. No, sir. I don't know that.

Q. Have you seen those expense bills?

A. I have on occasions, yes. I have only once or twice.

Q. The great majority of your shipments, I believe you said, were sold to the Norris Elevator Company?

A. That is right.

Q. And deliveries made at the Norris elevator on the Sag Canal in Chicago?

A. That is right, if it comes in through the Sag Canal.

Q. Also some to the Continental?

A. I haven't sold Continental any for two or three years.

Q. Anybody else?

A. Not in Chicago. Norris only in Chicago.

Q. Why do you say it that way?

A. I have sold some grain to Memphis and other points, see.

Q. Oh, south?

A. Yes.

Q. Where do you get your requests for the shipments and the bid for the shipments? Where do you make this agreement with them to take a barge load?

A. Oh, I sell them that over the phone.

[fol. 1854] Q. Do you sell it over the phone to Norris and Company?

A. That is right.

Q. Not through any third party?

A. No.

Q. Never?

A. No. I have. The past year, I haven't sold through a third party. I have at various times sold through a commission man.

Q. Who was it?

A. M. L. Vehon.

Exam. Taylor: Is that all from this witness? Does that bring up any further questions?

Mr. Enoch: I wonder if there wasn't an inconsistency here, an inadvertent inconsistency. Mr. Finnegan has testified that the freight charges are paid in Chicago, and I call your attention to exhibits 35 and 36, which purport to be shipments from Finnegan Grain Corporation to a Chicago house, and the description rendered to support the outbound movement shows prepaid, and I wondered if there were any explanation to be made of that.

The Witness: I can't make any. It is deducted from the price of my grain when it is unloaded and weighed.

Exam. Taylor: Is that all from this witness?

Mr. Macaulay: That is all.

Exam. Taylor: Witness excused. The next witness.

(Witness excused.)

Mr. Macaulay: Mr. Donahoe.

[fol. 1855] JOHN T. DONAHOE, was sworn and testified as follows:

Direct examination.

By Mr. Macaulay:

Q. State your name, please.

A. John T. Donahoe.

Q. Where do you live?

A. Morris, Illinois.

Q. Do you own or operate any farms?

A. I operate 320 acres of land and own about 650 acres more, and then I take care of 700 acres for some minor heirs; relatives of mine.

Q. Aggregating about 1700 acres?

A. Roughly, about 1700 acres, yes, sir.

Q. Is any grain raised on those farms?

A. Yes, sir.

Q. Do you have anything to do with the selling of that grain?

A. Yes, sir.

Q. How long have you operated these farms that you spoke of?

A. The one that I operate myself, about 15 years, and I have looked after the rest of the property since the death of my father, about 1934.

Q. Did you have occasion to sell any of the grain from any of these farms prior to 1934?

A. Yes, sir.

Q. For how long a period prior to that, do you recall?

[fol. 1856] A. Well, since 1923.

Q. Did you ever have occasion to note, prior to 1934, the difference in the price received by you from the local elevator and the Chicago price on the Board of Trade?

A. Yes, I have.

Q. Do you have a recollection as to the relationship of the price received with the price on the Chicago Board of Trade?

A. Well, roughly, it would be——

By Mr. Enoch:

Q. No, he said have you got a recollection?

A. Yes, I have.

By Mr. Macaulay:

Q. Will you state what that is?

Mr. Enoch: I object unless he gives the specific figuers.

By Exam. Taylor:

Q. Can you give specific figures?

A. Well, about 10 cents a bushel.

Mr. Enoch: I move that the answer be stricken out. Now, may I suggest, I think the Commission ought to, if it is material at all, it ought to know on the day the transaction occurred, what the Chicago price was he is talking about and how must he got down at Morris or at his farm.

Exam. Taylor: Can you meet that objection?

Mr. Macaulay: I can't meet that because it is a matter of past history; and I think, however, that the question should be allowed to stand because he is stating his recollection and his actual handling of the rates. He is not predicating it on what somebody else got; he is predicating it on his [fol. 1857] own experience over a number of years. I think that relationship can be testified to in that way.

Exam. Taylor: It will be received, subject to that objection and open to cross examination at the appropriate time.

By Mr. Macaulay:

Q. Have you had occasion to sell any grain since 1934?

A. I have, yes.

Q. Have you sold any grain at any of the local river elevators at Morris, Illinois?

A. Yes.

Q. Or Patonville?

A. I have.

Q. Are you able to state whether or not there is any different range in the relationship of the price received by you now and the price received by you prior to 1934, as related to the Chicago price?

A. Yes, roughly, I would say——

By Mr. Enoch:

Q. Are you able to state it? I think that is the question; and the answer is yes to that. I am going to object if you are going ahead and——

A. Yes, I think I can.

By Mr. Macaulay:

Q. Did you sell any grain during 1939 to the river elevator?

A. Yes, I did.

Q. Calling your attention to the year 1939, a transaction [fol. 1858] which you may have had in 1939, can you state

whether or not the—can you state about what the relationship was with reference to the Chicago price and the price you actually received?

Mr. Enoch: Please note an objection to that, if your Honor please.

Exam. Taylor: Same objection, same ruling.

The Witness: Well, my answer to that would be approximately 3 cents; a difference from before the river elevator—or in other words, it would be, where it used to be roughly 10 cents, it would be 7 cents today.

Exam. Taylor: That is all, Mr. Macaulay?

Mr. Macaulay: That is all.

Exam. Taylor: Any questions by counsel for protestants? (No response.) Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Donahoe, I understand you are a farmer in the vicinity of Norris?

A. Morris.

Q. Morris, Illinois?

A. Yes, sir.

Q. And your testimony is that you today, since the waterway has been in operation, receive nearer the Chicago price than you did before the waterway was in operation, isn't that so?

A. Yes, sir.

Q. You sell your grain on the basis of the delivered price [fol. 1859] in Chicago, don't you?

A. I sell my grain on—yes. Now, of course I don't know how this man does with the grain, but I take as a measuring stick the cash market on the day that I sell my grain, the cash market in Chicago.

Q. You sell your grain with relation to the transportation costs that it takes you to get from your farm to Chicago, don't you?

A. The grain man takes care of that, of course.

Q. Isn't that reflected in the amount of money that you secure for your grain?

A. Yes, sir, that is right.

Q. Now, do I understand that we are doing anything in this case that is going to affect in the slightest degree the

cost of hauling grain via water from Morris, Illinois, to Chicago?

A. Maybe not in the cost from Morris to Chicago.

Q. That is all I asked you. Are we doing anything in this case that will affect the cost of the transportation of grain from Morris, Illinois, to Chicago by water?

A. No, I guess not.

Mr. Cole: Thank you. That is all I have.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Where is this farm of yours located?

A. The one I operate myself is about 3 miles from Morris, and the rest of the land referred to is——

Q. Now, just a minute. Let's take this 320 acres first.

[fol. 1860] A. Yes.

Q. Three miles south of Morris?

A. Yes, sir.

Q. Is Morris the nearest town?

A. Yes, sir.

Q. How much corn do you produce there?

A. In 1939?

Q. Yes.

A. About 5,000 bushels.

Q. Did you sell it?

A. In 1939, part of it. Some of it is sealed.

Q. What other crops did you have?

A. Oh, the regular farm crops of that community; oats, beans.

Q. How much oats and beans?

A. The oats was all kept for feed. I had about 50 acres of oats.

Q. You don't know what it ran?

A. No, I wouldn't. It has just been fed up; just thrashed and we fed it.

Q. You don't know whether you got a thousand bushels out of it?

A. I could tell you roughly, yes. Probably went 40 bushel to the acre; 2000 bushels.

Q. How many acres did you have in corn?

A. About 1000 acres.

Q. And the rest in what?

A. Some beans, some 20 acres in beans, 15 acres of al-
[fol. 1861] falfa and the rest in pasture.

Q. Where you sold corn or other grain, you sold it to the elevator at Morris, did you?

A. Yes, sir.

Q. To the Square Deal Elevator?

A. The Finnegan Grain Company.

Q. The Finnegan?

A. Yes, sir.

Q. Do you always sell your grain to Finnegan?

A. I have for the last four or five years, yes.

Q. How do you get it to the elevator?

A. By truck.

Q. Your own truck?

A. No, sir, hired trucks.

Q. Hired trucks?

A. Yes, sir.

Q. One of the neighbors?

A. As a rule, it is the man that has the sheller; does the shelling and hauling.

Q. The man that goes around the country shelling corn?

A. Yes, sir. He has the trucks and does the shelling and hauling.

Q. And he hauls it as soon as he shells it, is that the way it works?

A. Yes, sir.

[fol. 1862] Q. What do you pay to haul it to Morris?

A. I have always—I think from this farm, it is about a cent and three-quarters a bushel to haul it and shell it, from this particular farm.

Q. You don't know what he charges to haul it?

A. No, sir, I don't.

Q. You always pay the cent and three-quarters and he does both?

A. He does the job for a cent and three-quarters, yes sir.

Q. You never did have any grain trucked without—that is, by someone else?

A. Oh, I have, yes, a few times.

Q. What did they charge?

A. Depended on the distance, the mileage. Anywhere from a cent to a cent and a half a bushel.

Q. And what is the ordinary shelling charge?

A. A cent a bushel.

Q. A cent a bushel?

A. Yes, sir.

Q. Where is this 650 acres that you own?

A. There is 240 acres seven miles from Morris.

Q. Seven miles south?

A. South, yes. There is 160 acres more that is about 14 miles south and west.

Q. Near what towns?

A. Well, the closest town is Verona.

[fol. 1863] Q. Verona?

A. Verona. And then there is 200 acres about 600 miles from Morris, south.

Q. South?

A. Yes, sir.

Q. That would be near Dwight?

A. About half way between Dwight and Verona.

Q. Did you inherit those particular tracts?

A. Yes, sir.

Q. Is the grain raised on those three tracts hauled to Morris?

A. Yes, sir.

Q. In every instance?

A. Yes, sir.

Q. You don't haul any to local elevators?

A. No, sir.

Q. Your sales are 100 per cent with Finnegan, are they?

A. For the last two years, two or three years, yes.

Q. Where are the other 700 acres? Are they in the vicinity of Morris or these other farms?

A. They are in the vicinity of those other farms. They are really closer Mazon, which is about 10 miles from Morris. They are near Mazon.

Q. And is the operation from these other farms about as you have described at your own farm?

A. They are rented, yes, sir. Those other farms——

[fol. 1864] Q. No, I mean the sheller looks after the shelling and hauling for you?

A. Yes, sir.

Q. And the grain is hauled to Morris in each instance?

A. Yes.

Q. What is the highest charge made to any of these farms for shelling and hauling?

A. Well, I will say this. We have one man that has shelled and hauled most of this grain, and I suppose he gives us a little better price; about a cent and a quarter or two cents.

Q. He makes you a flat charge on account of the big business you do with him, is that right?

A. That is right. I think two cents is about the top from the farthest haul.

Q. And what is the farthest haul?

A. Roughly, about 17 miles.

Q. Do you know the capacity of this man's truck?

A. No, I don't.

Q. You don't know how many bushel- it will haul?

A. No, I don't.

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Do you sell any oats from any of these other farms?

A. Very little; just maybe to clean out a bin, or a few [fol. 1865] hundred bushel-.

Q. Have you sold any oats in the past four or five years other than you have just described?

A. No, nothing only——

Q. Did you sell anything that bases on Chicago for price?

A. Beans would be about all.

Q. Any other grain?

A. No, sir.

Q. How do you move your beans out that move to Chicago?

A. Well, I will have to say that we have sold very little beans. We are not much on raising beans, so we have sold very little of them, and I have always just paid very little attention to the price; just took the price, whatever it was.

Q. Do you remember the day you sold your corn or one of the days you sold your corn?

A. No, I don't.

Q. How many bushels of corn did you sell in 1939?

Exam. Taylor: You mean from all of his farms?

By Mr. Enoch:

Q. Well, out of this 5000 bushels that were raised on the 320 acres.

A. How much of that 5000 bushel—there was 15,000 bushel- shelled and I probably fed a thousand, 1500. About 2000 bushels I sold.

Q. Did you sell it all at one time?

A. Yes, I did.

Q. Do you remember the day you sold it?

[fol. 1866] A. No, I don't.

Q. Was it in December or November, 1939?

A. No, I sold some corn in—some corn was sold in September.

Q. Was that old corn or new corn?

A. Oh, 1939. No, that would be old corn. You want to know of the 1939 crop?

Q. You sold 2000 bushels of this 5000 you raised in 1939?

A. No, that is the 1938 crop.

Q. Oh, the 1938 crop?

A. Yes. The 1939 crop is still there.

Q. You haven't sold any in 1939?

A. No, sir, of the 1939 crop. I have sold corn in 1939.

Q. Now, didn't you say that you sold that all at one time?

A. The 2000 bushels?

Q. Yes.

A. Yes.

Q. And was it all delivered and shelled at one time?

A. Yes, sir. I think this man has three trucks and he took it all.

Q. Do you remember what month it was sold in?

A. I think that particular lot was sold in September.

Q. Do you remember what week or what day?

A. No, I do not.

Q. So that we can't find out what the cash price was in Chicago on the day that—do you have any records that would show that?

[fol. 1867] A. I have records at home, yes, but I haven't any idea what the price was. I haven't even an idea on the price.

Q. How much did you get for that corn?

A. Now, you have got me there; I wouldn't know, I wouldn't know.

Q. You must operate a country elevator, don't you?
A. No, sir.
Q. Have you got any interest in one?
A. No, sir.
Q. Any interest in the Finnegan Grain Corporation?
A. No, sir.
Q. Nor any one of the Finnegan enterprises?
A. No, sir.
Q. Who is this man that does this trucking and shelling?
A. Well, there is two or three different men. The last man is—by name? You would wish his name?
Q. Yes.
A. Seward Hauge.
Q. Without naming them, will you tell me—are they located in Morris?
A. Local men.
Q. In Morris?
A. This particular man is a farmer north of Morris.
Q. Any of them located in Morris?
A. I think they are all farmers outside Morris.
Q. Any of them affiliated, so far as you know, with any [fol. 1868] of these people in Morris that are engaged in shipping this corn up the river?
A. No, I don't think so. They run land there; renters, most of them, I believe; bought these mounted shellers and went into this.

Mr. Enoch: That is all.
Exam. Taylor: Mr. Brown.
Mr. Brown: Yes, sir.

By Mr. Brown:

Q. Mr. Donahoe, when you receive a bid of grain from Mr. Finnegan, does that require you to deliver it at his elevator at Patonville?
A. Yes, sir.
Q. He never bids you a price at the farm?
A. Oh, I guess he has, yes.
Q. But is it usual that you have to make delivery at the elevator?
A. Yes, we usually do. Of course, it makes no difference if he bids me at the farm, he just takes the shelling and hauling out, so it is as broad as it is long, in money.

Q. But after the grain is delivered, no matter whether you deliver it direct or he takes it at the farm, when you get your money, you are entirely through with that transaction?

A. Yes, sir.

Q. How did you figure this 7 cent difference between the price you had been receiving for corn and the Chicago price that same day? I assume you meant the Chicago cash price, although you didn't say so.

[fol. 1869] A. You misunderstood me, I don't mean 7—I beg pardon, what is that question again?

Exam. Taylor: Read the question.

(Question read.)

The Witness: Well, as an example——

By Mr. Brown:

Q. Suppose the Chicago price on the same day was for No. 2 yellow or better, cash price was 60 cents. Do I understand that you have been getting about 7 cents under that or about 53 cents delivered at the Morris elevator, 7 cents difference?

A. 8 cents. I would get about—you said 60 cents?

Q. Take 60 cents corn.

A. Yes.

Q. It has been around that?

A. I would get 52 delivered at the elevator.

Q. You would get 52 delivered at the elevator?

A. Yes, sir.

Q. Now, out of that 52 cents that you got at the elevator, did you have to pay for the trucking?

A. Oh, yes, sure, I would have to pay for that.

Q. So your net would be somewhere about 50 cents?

A. Somewhere there, yes.

Q. That you actually got after you paid for the trucking?

A. No, that—I am wrong there. That would be with everything paid. It would be 52 cents to me.

[fol. 1870] Q. 52 cents to you?

A. Yes.

Q. The shelling and the trucking would go in with it? That would be just about 8 cents a bushel under?

A. Under Chicago.

Q. The Chicago price net to you?
A. Yes, sir.

Mr. Brown: That is all.
Exam. Taylor: Is that all the cross examination of this witness? (No response.) Anything on redirect, Mr. Macaulay?
Mr. Macaulay: Nothing.
Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.
Mr. Macaulay: Mr. Finnegan.

O. W. FINNEGAN was sworn and testified as follows:

Direct examination.

By Mr. Macaulay:

Q. Will you state your name, please?
A. O. W. Finnegan.
Q. Where do you live, Mr. Finnegan?
A. Near Dwight.
Q. On a farm?
A. Yes, sir.
Q. Are you related, Mr. Finnegan, to Mr. James F. Finnegan?
[fol. 1871] A. James is a second-cousin of mine.
Q. How large a farm do you live on, Mr. Finnegan?
A. 240 acres.
Q. Do you operate that yourself?
A. Yes.
Q. How long have you lived on this farm?
A. 25 years.
Q. Have you operated any other farms besides this one farm?
A. No, I haven't.
Q. Have you had any experience of any kind in the grain business?
A. Well, some years ago, I did.
Q. State what experience you have had?

A. Well, I operated the Campus Grain Company at Campus and Cardiff for ten years.

Q. About when was that, Mr. Finnegan?

A. Well, I think I come in there in 1906.

Q. 1906 to about 1916, then?

A. I think so.

Q. In your operation of your own farm near Dwight, do you sell grain as it is grown on that farm?

A. Yes, sir.

Q. Did you ever have occasion, prior to 1934, to note the difference, the approximate difference between the price you received at the farm and the Chicago cash price of grain on the day of sale?

[fol. 1872] A. Will you state that again, please?

Exam. Taylor: Read the question.

(Question read.)

The Witness: Yes, I think I have noticed a difference.

By Mr. Macaulay:

Q. Do you have a sufficiently distinct recollection so that you would be able to state the approximate amount of that difference?

A. Well, I think the approximate amount would be——

Q. Just say yes or no.

Mr. Enoch: I want to get an objection in here at the right time.

Exam. Taylor: Objection noted.

By Mr. Macaulay:

Q. Just say yes or no whether you have such a recollection?

A. Well, I have.

Q. And what is that approximate difference?

Mr. Enoch: I object.

By Mr. Macaulay:

Q. What was that approximate difference?

Exam. Taylor: Objection noted on the record. Same ruling.

By Mr. Macaulay:

Q. Will you state that approximate difference?

A. Well, I would say about 4 cents.

Q. About 4 cents between the Chicago market and the price you receive on the farm?

A. Yes, I think so.

[fol. 1873] Q. Now, have you had occasion to note the difference in the price since 1934, difference between the Chicago price and the price you received?

A. The difference between the Chicago price and the price I received?

Q. On the farm for your grain.

Mr. Enoch: At what time are you talking about?

Mr. Macaulay: Subsequent to 1934.

Mr. Enoch: I think that——

Mr. Macaulay: Maybe I ought to have one preliminary question. I will withdraw that.

By Mr. Macaulay:

Q. Do you ever sell any grain to any of the river houses at Morris, Illinois?

A. Yes, I have.

Q. And when was the last time that you sold grain to the——

A. Well, I have sold grain to the river three time- this fall, this last fall.

Q. Do you know the approximate dates when you sold grain?

A. I sold September, October, November, I think.

Q. Do you know about the quantities each time?

A. I sold 4000 bushels the first time. I sold a thousand bushels the second time and 2600 bushels the third time.

Q. Now, do you recall what prices you received for each of these lots?

[fol. 1874] Q. Will you state what they are?

A. I received 68 cents for the first lot, I received, I think, 52 cents for the second lot and I received 52½ cents for the third lot.

Q. And is that for the entire—was that net to you?

A. No, sir, that wasn't net to me.

Q. What was the net price to you?

A. A cent and a half less on each bunch.

Q. A cent and a half less on each bunch. And what did that cent and a half represent?

A. It represented the trucking charges.

Q. Now, at the time of those sales, did you have any occasion to note the price at which grain was being sold on the Chicago cash market?

A. Well, I did. I watch it very close, but I couldn't tell offhand right now what the difference was. I think perhaps, maybe perhaps 7 or 8 cents per bushel.

Mr. Enoch: I move to strike that out.

By Exam. Taylor:

Q. Do you know that as a fact, Mr. Finnegan, or are you just——

A. Do I know it as a fact?

Q. Or are you just averaging or how are you arriving at that figure?

A. Well, perhaps it is a fact, but still I wouldn't state it as a fact on particular dates, but I know what the differ- [fol. 1875] ence is every day. I watch the market every day.

By Mr. Macaulay:

Q. About what is the difference, would you say, between——

Mr. Enoch: I object unless he tells us the day and what the price is at Morris and what it is at Chicago.

A. Well, I can't do that. Of course, if I got the market today, I could tell you today, but I didn't get the market today.

Exam. Taylor: He means the days that you sold those three lots that you referred to in September, October and November.

The Witness: I think the difference between the cash market and the price I got was about 7 cents.

By Mr. Macaulay:

Q. Did I understand you, then, that you are getting 3 cents a bushel less for your grain now than you did before 1934?

Mr. Enoch: I object. All that subject has been covered and covered more than it should have been, in my opinion.

Mr. Macaulay: I think so.

Exam. Taylor: Don't the figures speak for themselves, Mr. Macaulay? You have got the figure on that.

Mr. Macaulay: That is all.

Exam. Taylor: Any questions, Mr. Root?

Mr. Root: No, thank you.

Exam. Taylor: Cross examine. Any questions, Mr. Cole?

Mr. Cole: No, I haven't.

[fol. 1876] Exam. Taylor: Mr. Day?

Mr. Day: I have none.

Exam. Taylor: Mr. Enoch?

Mr. Enoch: I have none.

Exam. Taylor: Mr. Brown?

Mr. Brown: Yes, sir.

Cross-examination.

By Mr. Brown:

Q. Mr. Finnegan, to whom do you sell your grain for delivery at a waterfront elevator?

A. To whom do I sell it?

Q. Yes.

A. Well, in recent years I have sold it to Mr. Finnegan, James Finnegan, most of it, not all of it.

Q. How far is your farm from his elevator?

A. 24 miles.

Q. 24 miles?

A. Yes, sir.

Q. What is the town?

A. Dwight, Illinois.

Q. Are you connected with any elevator?

A. No, sir.

Q. When you receive a bid from Mr. Finnegan for delivery of corn at his elevator, do you arrange for that grain to be trucked to the elevator?

A. Yes, sir, invariably I do; not all of the time.

[fol. 1877] Q. Well, when you do that, you make delivery, you get your money for the corn, you are through with it, aren't you?

A. Yes, sir.

Q. You have no more connection with that grain?

A. No, sir.

Q. All right. As I understood you, the difference that you received for your grain and the Chicago cash price,

say, about the same day, say, for No. 2 yellow corn or better, would be 7 cents a bushel?

A. Approximately.

Q. In other words, if it was 60 cents a bushel Chicago cash price on a range, you would get it about 53 cents?

A. About that.

Q. Now, for that 53 cents, do you have to deliver at Mr. Finnegan's elevator on the river?

A. For that 53 cents?

Q. Yes, 53 cents that he bids you, as I understand it, you have to make delivery of corn to the river?

A. Well, sometimes I do it that way and sometimes the other way. Sometimes I pay for the hauling and sometimes Mr. Finnegan pays for the hauling, and then the price is different.

Q. All right, now, let's take that first. There is a deal between you whereby you are going to deliver the corn to the elevator.

A. Yes, sir.

[fol. 1878] Q. All right, now. That would be an expense to you, wouldn't it?

A. Yes, sir.

Q. What price would you receive at his elevator for the delivery? You have got to deliver him certain corn. What price do you get?

A. Well, I think I would get about 54½ cents, if he paid for the hauling—no, if I pay for the hauling, I would get about 54½ cents.

Q. And that would be 5½. Now, out of that 5½ cents, you pay for the shelling and the hauling down to the elevator?

A. I pay for it?

Q. Yes.

A. No, he paid for the hauling.

Q. What I want to get is, where does this 7 cents comes in? If you make delivery to his elevator, paying for the hauling from your farm to his elevator, is your net difference the 7 cents a bushel?

A. Not for the shelling and the hauling. No, it isn't for the shelling and the hauling. All the expense I have on my corn is the cent for shelling and a cent and a half for hauling it.

Q. That is 2½ cents? A cent and a half a bushel for hauling and a cent for shelling?

A. Yes, sir.

Q. All right, now, let's leave the shelling out. Where does the 7 cent difference come in between the Chicago price [fol. 1879] and what you get? Is that where Mr. Finnegan buys it on your farm and he pays for the hauling from your farm to the elevator? Is that where you get the 7 cents?

A. I suppose that is his expense. I suppose he figures the margin of the freight rate between Morris and wherever the grain goes and what other expense there is on it.

Q. All right, let's put it this way. If he bids you a certain price and you make delivery to his elevator, you do the hauling then or hire it, will your net then be about 5½ difference?

A. I think so.

Q. The 5½ cents and the cent and a half making about the 7?

A. I think so.

Q. If he takes it from your farm, your net is just about the same, because you don't have to pay for the hauling; instead of being 7 cents, it is really 5½ cents, isn't it?

A. I suppose.

Q. You are not a member of these Allied Elevator or anything else?

A. No, sir.

Q. Just a farmer selling your own grain?

A. Just a farmer selling my own grain.

Exam. Taylor: Is that all from this witness? Anything on redirect? Anything on redirect, Mr. Macaulay?

Mr. Macaulay: No, nothing here.

Mr. Root. May I ask one question?

[fol. 1880] Exam. Taylor: Yes, Mr. Root.

Redirect examination.

By Mr. Root:

Q. Mr. Finnegan, when you were at Campus, Illinois, how much did you say the difference was between the amount you could pay to your farm patrons and the Chicago cash market on any particular day?

Mr. Enoch: I object to that; same objection.

Exam. Taylor: Same ruling.

By Mr. Root:

Q. Go right ahead and answer it. Tell me what that difference was.

A. When I was in Campus, we had a 5½ cent rate at one station and 6 cent rate at the other.

Q. Yes.

A. Of course, I haven't kept step with this freight rate change all the way up, but now the freight rate in our locality has been almost twice that much.

Q. I asked you what you paid when you were in Campus?

A. I bought grain on a margin of about three cents and a half a bushel. That meant on a six cent rate. Of course, it was all hauled in by the farmers themselves, and that is all we had to figure on, our margin of profit.

Q. And how much did it cost you? Is that 5½ and 6 cent in addition to the 3½?

A. In addition to the 3½ cents?

Q. The 3½ cents you took out for your operating margin.

[fol. 1881] A. That was the freight rate, it was 6 cents a hundred or 5½ cents a hundred. I don't know how much it figures out per bushel.

Q. About 3½ cents a bushel. How much did you take out for your expense of elevator operation and profit?

A. It took a cent and a half.

Q. For the profit or the whole thing?

A. Profit.

Q. How much was your expenses then, of operating?

A. About $150 a month.

Q. Well, you took off between 6 and 7 cents a bushel, then? Is that under the Chicago market?

A. 6 or 7 cents a bushel? No, sir, we didn't take off that much.

Q. Can you just make one direct statement as to how much under the Chicago cash market you paid your customers in Campus when operating that elevator back during those years?

Mr. Enoch: I object to that.

Mr. Root: I just want to get one statement.

By Exam. Taylor:

Q. Do you recall, Mr. Witness? Do you recall that far back?

A. I will let her read it.
Q. Is it hazy to you?
A. I want her to read it.
Q. If it is hazy, it wouldn't do any good.
A. It isn't hazy, if I can just get it straightened out, what [fol. 1882] you want me to explain.

By Mr. Root:

Q. Supposing on any particular day the Chicago cash grain market was 55 cents a bushel.
A. Yes.
Q. And I came in as a farmer and said, "Mr. Finnegan, I have a thousand bushels of corn to sell and I will deliver it to the elevator, No. 2 corn?
A. Yes, sir.
Q. When you were at Campus, now. How much would you have paid me for No. 2 corn, assuming the Chicago price was 55 cents?

Mr. Enoch: I object.

The Witness: I would pay you 49 cents at that time.

Exam. Taylor: Objection noted.

Mr. Enoch: I move that answer be stricken.

Exam. Taylor: The objection is noted on the record. Is that all from this witness?

Mr. Macaulay: That is all.

Exam. Taylor: Mr. Brown? Witness excused.

(Witness excused.)

Exam. Taylor: We will take a five minute recess now.

(Recess taken.)

Exam. Taylor: Let's come to order. Mr. Macaulay, was that all?

Mr. Macaulay: I have noted one matter in connection with the Board of Trade's exhibit 38. I was wondering [fol. 1883] whether Mr. Benson would step on the stand just a minute so I might ask him a matter of clarification of some of the rates. It won't take two minutes.

S. H. Benson, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Macaulay:

Q. Mr. Benson, referring to exhibit 19, page 7——

Mr. Brown: You said 38.

Mr. Macaulay: There is one question in each of these.

By Mr. Macaulay:

Q. Which is receipts of grain at Chicago in bushels for 1938, I notice that the lake is defined from Duluth. Could you state whether or not the Board of Trade records show any receipts from any other lake ports in 1938 other than Duluth?

Mr. Brown: I didn't get that question.

(Question read.)

The Witness: This record would indicate that receipts via lake were from Duluth only.

Mr. Macaulay: All right.

By Mr. Brown:

Q. For that year?

A. 1938.

By Mr. Macaulay:

Q. Now, referring to exhibit 38, which was the one you put in the other day, I notice on page 1 thereof in the statement covering 1939 receipts are Chicago, there is no [fol. 1884] break-up of the receipts by lake but merely the statement "by lake." Are you able to state from what ports that grain was received?

A. I was informed that that also was from Duluth, although there is no specific reference thereto; head of the lakes.

Q. So that in 1939, the receipts as shown by lake may account for any one of a number of points shown in former years in your exhibit No. 19?

Mr. Enoch: Wait a minute.

The Witness: No, I was told by the compiler of the records that those receipts came from the head of the lakes;

Duluth and Fort William; barley from Fort William. Our attention was directed to the fact that he made no specific reference to the origin. I was told that in a general way, it came from the head of the lakes.

[fol. 1885] Mr. Macaulay: Mr. Examiner, inasmuch as in all years prior to 1938, there was a definite breakdown of the place from which the grain arrived, I believe that we ought to have that information for 1938 and 1939, if it is available. The Board of Trade have probably the only official complete records there are.

The Witness: 1938 is complete. It shows Duluth.

By Mr. Macaulay:

Q. But 1939, you have changed the method of setting that up?

A. I personally don't compile those figures. The information I did get from the compiler was that it shows from the Head of the Lakes, Duluth. The barley came from Fort William.

Q. If it was from any other points, would you so advise me?

A. Yes.

Q. Other than Duluth and Forth William?

A. I will ask them again and be as specific as possible.

By Exam. Taylor:

Q. Will you furnish that in ten days or can you furnish it tomorrow?

A. I will furnish it tomorrow.

Mr. Belnap: Can I ask Mr. Benson a few general questions concerning tariff references for which Mr. Brown gave tariff references, Toledo and Buffalo, while he is available?

Exam. Taylor: All right.

By Mr. Belnap:

Q. The tariffs came from the tariff files at the Chicago Board of Trade?

[fol. 1886] A. Yes, sir.

Q. And you have given those tariffs a general examination to know the general contents thereof?

A. Yes, sir.

Q. Could you tell me as to whether or not the transit tariff at Toledo and the transit tariff at Buffalo, the one being Jones' ICC No. 3240 and the other Pennsylvania Railroad 2065, are substantially the same as the transit tariff at Chicago in respect of the recording of tonnage received inbound by boat and inbound by rail, method of recording freight bills or boat manifests, the cancellation of tonnage against local disposition or shipment outbound by rail or by boat, the time limit within which these things must be done, the matter of the shipper's certificate that he has compiled with all the rules and the general rules as to the determination of legal rates applicable on shipments on which transit privilege is claimed?

Mr. Enoch: Just a minute, now. Off the record.

Exam. Taylor: Yes.

(Discussion outside the record.)

By Mr. Belnap:

Q. Did you answer it, Mr. Benson?

A. I would say that they are identical with respect to those provisions.

Q. Would you make that answer generally to the various provisions in the tariff that go to policing the transit and the rate applications?

[fol. 1887] A. That is true to all tariffs that affect prices east of Chicago.

Q. Yes. And these are the tariffs that would be referred to in connection with the ex-lake rates from Toledo and from Buffalo?

A. Yes, sir.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness. Mr. Macaulay, have you completed now?

Mr. Macaulay: Yes, I have, your Honor.

Exam. Taylor: Mr. Belnap, have you a witness you wish to call?

Mr. Belnap: I have a witness who is readq. Mr. Oliphant

Exam. Taylor: Off the record, we will number the exhibits starting with No. 63.

(Exhibits 63 to 66, both inclusive, Witness Oliphant, marked for identification.)

Exam. Taylor: All right, now, have they all been distributed?

Mr. Belnap: Yes, sir.

Exam. Taylor: Now, are you ready to proceed, Mr. Belnap?

Mr. Belnap: Yes.

[fol. 1888] W. G. OLIPHANT, was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Please state your name.

A. My name is W. G. Oliphant. I am employed as Assistant General Freight Agent in the Traffic Department of the Inland Waterways Corporation, which operates the Federal Barge Lines. My office address is 211 Camp Street, New Orleans.

Q. What has been your traffic experience, Mr. Oliphant?

A. I have since 1922 been in the employ of the Inland Waterways Corporation in various capacities, among which included chief clerk in the office of the local freight agent at New Orleans, to and including my present position in the traffic department. Prior to my affiliation with the Inland Waterways Corporation, I was employed by a subsidiary line of the Gulf Coast Lines at New Orleans, in various clerical capacities, among which included local freight agent. My transportation experience extends over a period of approximately 22 years.

Q. Are you familiar with the issues in this proceeding?

A. I am familiar with the issues in this proceeding.

Q. Now, Mr. Oliphant have you prepared a series of exhibits which you desire to introduce at this time, together with an oral explanation of those exhibits?

A. I have.

Q. Will you please proceed to do that.

A. I am appearing here in behalf of the Inland Water- [fol. 1889] ways Corporation, hereinafter called the Federal Barge Lines, as a protestant, in opposition to the restrictions contained in the suspended schedules against ex-river grain. It will be my purpose to present facts to the

Commission concerning these restrictions and the ultimate effect, should they become operative, upon the Federal or any other water carrier now participating in the transportation of grain between the river ports.

Our position in this case is that the local rates from St. Louis, Missouri, East St. Louis, Illinois, Peoria, Illinois, and Chicago, Illinois, to destinations named in the suspended schedules which are made applicable to ex-barge grain transported on rates not on file with the Commission, and discharged at the river ports, are excessive to the extent that they exceed the rates contemporaneously provided for application to ex-lake grain transported on rates not on file with an regulatory body, and on ex-rail grain from the same proportional rate points to the same destinations. It is also our contention that the application of higher rates to ex-barge traffic than to ex-rail traffic is unjustly discriminatory and unduly prejudices the Federal Barge Lines and the traffic in which it participates.

Q. In respect to that matter do you also complain of the improper relationship as compared with ex-lake grain?

A. Yes.

Q. Proceed.

[fol. 1890] A. For the purpose of identification, I will briefly describe the Federal Barge Lines.

It is a common carrier by water operating water carriage facilities between various ports on the upper Mississippi River from the Twin Cities, Minneapolis and St. Paul, Minnesota, to St. Louis, Missouri, and East St. Louis, Illinois; on the lower Mississippi River from St. Louis, Missouri, and East St. Louis, Illinois, to New Orleans; and from New Orleans to Mobile, Alabama, and thence to Holt and Port Birmingham, Alabama, formerly known as Birmingport, Alabama, via the Industrial Canal, the Mississippi Sound, the Mobile, Tombigbee, Warrior and Black Warrior Rivers; and on the Illinois and Chicago Rivers, from its confluence with the Mississippi River to Chicago, Illinois. On June 7, 1935, service was inaugurated on the Missouri River, from its confluence with the Mississippi River to Kansas City, Missouri. With the exception of Cairo, Illinois, the Federal Barge Lines does not serve any port on the Ohio River, as provision being made in the law for its operation on that stream.

Since its inauguration the Federal Barge Lines has engaged rather extensively in the transportation of grain,

although the tonnage transported by it in any year has been insignificant compared with the tonnages of grain transported by competing all-rail routes. Originally, the greater portion of the grain transported by the Federal Barge [fol. 1891] Lines was destined to New Orleans primarily with a view to water movement beyond. However, in June, 1931, service of the Federal Barge Lines was extended to the Illinois River, and when this service commenced, the Federal Barge Lines engaged in the transportation of grain on this stream to the Illinois River ports. Grain so handled is available for reshipment from the Illinois River ports to North Atlantic and Canadian ports principally by rail transportation.

Q. Mr. Oliphant, when you first extended Federal service to Illinois, it only went to Peoria, did it?

A. Yes.

Q. That is 1931?

A. That is right.

Q. Do you recall what year it was that the service was extended on to Chicago?

A. I am not so certain about this but I think it was in 1932. I can supply that accurately, though; give it for the record tomorrow.

Q. It was some time after you came to Peoria but still quite a few years ago?

A. That is right.

Q. That is sufficient.

Mr. Enoch: Are you referring to business originating at Chicago?

Mr. Belnap: I am referring to extension of service into [fol. 1892] Chicago.

The Witness: Beyond Peoria into Chicago.

Mr. Belnap: Service of the Federal Barge Lines.

Mr. Enoch: Inbound and outbound? I thought you were talking about grain?

Mr. Belnap: No, I am talking about service of the carrier.

The Witness: In support of the statement concerning the participation of the Federal Barge Lines in the transportation of grain, I now introduce Exhibit No. 63, which is a statement consisting of one page, setting forth the grain tonnages of the Federal Barge Lines for the years 1933 to 1939, inclusive, transported on unfiled rates.

I desire to make some corrections on this exhibit, namely, opposite the third origin, Cora Island, Missouri, under the column 1936, the figure 28 should be changed to read 280, opposite the commodity corn. And in the fourth origin, Davenport, Iowa, the figure 14 under the column 1934 should be changed to 140. That affects the grand total and the figure 1964 in the grand total, opposite St. Louis, under the year 1934, should be changed to read 2090. And under the column 1936 opposite the grand total for St. Louis, the figure should be changed from 10836 to 11088.

The basis employed by the Federal Barge Lines in the establishment of rates on grain in this territory is 2 mills per ton per mile, plussed by the increases provided in Ex [fol. 1893] Parte 123 determined from the use of mileages published and on file with the Interstate Commerce Commission in Federal Barge Lines' Mileage Circular ICC No. 82, a copy of which is now introduced as Exhibit No. 65.

By Mr. Belnap:

Q. The miles shown in that exhibit and the miles which you use in determining your rates are water miles, are they not?

A. That is correct. Four and a quarter cents per hundred is observed as a minimum rate, except at Chicago where the minimum rate increased by reason of legal towing charges, which are added to the basic minimum rate in different amount, depending upon the weight used or the minimum weights applicable to those rates.

Rates established on this basis apply free in barge at port of loading and port of discharge. That is, the rates do not include any expense of loading into or discharge from the barge. Likewise, any expense necessary to bring the grain to the river port for loading, and any expense necessary to transport the grain from the river front after discharge, is in addition to the line rates.

Minimum weights per shipment on these rates range from 140 tons to 1500 tons, depending upon the port at which the grain is loaded and discharged. The 140 ton minimum is the base minimum, and is applied only from and to regular ports of call, which ports are shown in our grain [fol. 1894] tariff No. 12-B which is Exhibit No. 66.

From irregular ports of call, that is, ports from and to which regular service is not maintained, a 300 ton mini-

mum prevails. The purpose of the 300 ton minimum at irregular ports is to assure sufficient tonnage to compensate the Federal Barge Lines for the additional stop necessary for setting out of barges at such irregular ports of call. At Chicago by reason of the cost of towing, which differs depending upon the size of the equipment to be towed, the rates vary with varying minima. The purpose of this method of establishing rates is to place all of the elevators at the Chicago Terminal on the same basis.

The formula which I have just described for determining the rates on bulk grain has been in use for quite a number of years, and although the rates are not filed with the Interstate Commerce Commission, nevertheless, changes are made in these unfiled tariffs only upon notice to the general public, and the rates are assessed as published. In other words, the rates are treated the same as if we were required to publish and file them with some regulatory body. The tariffs are printed and distributed in the same manner as is required by law in connection with our filed tariffs.

Q. Except that you don't send them to the Interstate Commerce Commission?

A. That is correct. And we do that for information only.

[fol. 1895] Q. You do send them for information?

A. Oh, yes, we send all of our all-water tariffs to the Commission, simply as a matter of information to the Commission.

By Mr. Enoch:

Q. You could change the rate on one day's notice, couldn't you?

A. That is true, but those changes are handled in the same manner as short-notice changes that are made by rail lines are handled.

Q. Whose permission do you ask?

A. We don't have to ask any permission.

Q. They aren't handled in the same manner?

A. By that I mean that the distribution and the publication of the supplements containing those rates are handled in the same manner.

By providing rates on a uniform mileage basis such as the basis here described, each port is given the benefit of its location. The rates so made do not include the service

of placing the grain into the barges or removing the grain therefrom, and it is commonly referred to as a free on-and-off basis.

The rates referred to in the suspended schedules as being published in Item No. 3662-C of F.B.L. Tariff No. 31-J, ICC No. 148, are constructed by use of the same basic method of determining rates for line service, that is, the 2 mills per ton per water mile for line haul, and the result is [fol. 1896] plussed by handling charges of 2½ cents per hundredweight, at both the port of receipt and the port of discharge and the result is increased by the increase as provided by the Commission in Ex Parte 123. The present transfer charge named in tariff 12-B, consequently, is 39 cents per ton. However, at the time that these rates published in Item 3662-C of Tariff 31-J were made, the 2½ cent per hundredweight was used or 50 cents a ton rather than 39 cents a ton.

By Exam. Taylor:

Q. In connection with what minimum?

A. Various minimums, depending upon the port. If the shipment was destined to Peoria, the minimum rate would be based on the 140 ton. If it went to Chicago, you would have three mimimums, see; 350, a thousand tons, 1,500 tons.

By Mr. Belnap:

Q. Now, are you speaking of——

By Exam. Taylor:

Q. With different rates?

A. The rates are different, yes.

By Mr. Belnap:

Q. Are you speaking about the grain rates published in your ICC No. 148?

A. That is correct. I want to bring out this fact, that when we first published those rates, a uniform handling charge was used at the origin port and at the destination ports, 2½ cents per hundred. That was added to the basic rate.

Q. Have you got that tariff with you, Mr. Oliphant?

A. No, I don't have it with me.

By Exam. Taylor:

Q. That is on bulk grain or package grain?

[fol. 1897] A. That tariff applies on package grain.

By Mr. Belnap:

Q. Are you sure you are correct about those minimum weights of 140 tons, under those rates?

A. No, but I thought maybe the Examiner might have the impression that we were using the handling charge as applied to the various minimums. That is not so. The handling charge is simply added to the rate. 2½ cents per hundredweight is included in the rate at origin and destination. After you apply the rate, then it goes to the minimum weight, but I am talking simply about the construction of this rate.

Q. When you answered the Examiner about 140, you were talking about your unfiled rates?

A. That is correct, not the rates in 31-J; those rates are different.

Q. But the Examiner asked you about those rates, did you not, Mr. Examiner?

Exam. Taylor: Yes.

The Witness: Those rates apply on carload quantities, those rates in 31-J.

By Mr. Belnap:

Q. The same minimum applies in connection with the rail rate, same commodity?

A. That is right. This method is followed because of the fact that these rates are applicable from in cars on docks at origin port to in cars on docks at destination port.

Exhibit 64, which I now introduce, is a statement of two [fol. 1898] pages showing the rates assessed by the Federal Barge Lines on grain from certain ports named to other ports of destination shown in the exhibit.

I desire here to make a correction on this exhibit for the purpose of eliminating any confusion. There is a No. 1 reference mark shown in the column captioned "Handling charges at origin and/or destination ports." That should be changed to the capital letter A, so as not to confuse it with the reference mark 1 shown after the column "Application." This requires a similar change on page 2 of

the exhibit, the very first line, where the reference mark 1 is explained, says, "Does not include switching charges," that reference mark should be changed to A likewise. On page 2 under the explanation of the application, opposite the No. 3, the word "from" should be changed to "to." "Applies to elevators named in application 1, above."

By Exam. Taylor:

Q. Mr. Oliphant, may I ask whether the rates shown in Column C of Exhibit 64, for example, from Burlington, Iowa, to Chicago, 10.80, is that in cents per hundred pounds?

A. Yes, sir, that is shown under that note at the heading of the exhibits, "Rates and charges are in cents per hundred pounds."

By Mr. Belnap:

Q. All of these rates apply for an all-water movement from port to port, do they not?

A. That is correct.

Q. That is the ones you are speaking about now on the [fol. 1899] column headed (c)?

A. Yes, sir. The exhibit also shows the incidental charges to be added to the line-haul rates for terminal services at the ports where such services are performed by the Federal Barge Lines. Rates are shown on the exhibit from and to the same stations shown on the tonnage exhibit, No. 63, except the station Kampville, Illinois, is not shown on the rate exhibit but it is shown on the tonnage exhibit.

It will be recalled that in my previous discussion of the Federal Barge Lines' rates on grain, reference was made to a free on-and-off application. By this is meant, that the rates are made strictly on a line-haul basis, without consideration being given to any terminal services, the expense of such additional services, when performed by the Federal Barge Lines, is in addition to the so-called "free on-and-off" rates.

I would like to now introduce Exhibit No. 66, which contains the bulk grain rates of the Federal Barge Lines applicable for all-water movement and published on the basis that I have just described.

Q. Before you leave 64, Mr. Oliphant, in a column headed (d), you show handling charges.

A. Handling charges are applicable where the services are performed at the elevators.

Q. Does that mean that the Federal Barge Lines holds itself out by the publication of these charges to perform [fol. 1900] with its own facilities, if the shipper asks it, a transfer of grain from cars to barges at point of origin and from barges to cars at point of destination?

A. Yes, and for that service a charge of 2¾ cents per hundred pounds is assessed. Now, the charge to Chicago, because all of the grain that we have handled has gone through elevators, we haven't used that 2¾ cents.

Q. Now, some of the charges there in that column are 4.75 and some are 5.50.

A. Well, the 4.75 charge appears opposite Chicago, where the 2¾ cents would be applied if the Federal Barge Lines transferred at the origin, and there is a 2 cent charge at Chicago which is made up of a cent and a half elevation and one-half cent trimming.

Q. Now, if I understand that column, wherever the amount is shown as 5.5 or 5.50, it is simply twice the 2¾ cent charge which the Federal Barge Lines publishes when it performs the service?

A. That is right.

Q. However, when you show 4.75——

A. Opposite Chicago.

Q. That is 2¾ cents to the Federal Barge Lines at origin?

A. That is correct.

Q. Plus a charge which the Federal Barge has no connection with at destination?

[fol. 1901] A. That is right.

Q. That is the trimming charge and a charge by the public elevator?

A. That is right.

Q. Do you mean to show on this exhibit that on all the tonnage which you handled as shown by Exhibit 63, these charges were paid?

A. Yes.

Q. Well, wait——

A. No, I wouldn't say that all of the tonnage there on 63, because I don't know how much of that tonnage was transferred by the Federal Barge Lines facility or how much of it was transferred through some elevator.

Q. So you answer to my question is no?
A. No.
Q. You are simply showing in your exhibit what the handling charge would be if the Federal Barge performed the service?
A. Yes.

Mr. Brown: That is on bulk grain?

By Mr. Belnap:

Q. This is all about bulk grain, is it not, Mr. Oliphant?
A. Yes, sir.
Q. Isn't it true that most of the origins shown on the exhibit, as well as the destination at St. Louis, the Federal Barge Lines has not performed the handling service of [fol. 1902] getting the grain into the barges at origin or getting it out of barges at destination?
A. Well, as to St. Louis, I would say most of the grain is handled through the elevator.
Q. That is destination. Now, we have taken care of both destinations.
A. That is right.
Q. How about the origins? Isn't it true at most of these origins that is put into your barge without the Federal Barge Line having anything to do with that service?
A. No, my understanding is that some of that grain has been transferred by us at Kansas City.
Q. And you also did transfer some at Peoria some years ago, did you not?
A. Yes, I think so.
Q. But that is an exception, an unusual circumstance?
A. It is.
Q. And ordinarily the shipper arranges himself for passing his grain through an elevator so it can be loaded into your barges?
A. That is true, and particularly so as to the Illinois River ports.
Q. But if you are called upon to do it, you hold yourself out to provide a facility for taking it out of his equipment and putting it into your barges?
A. Yes, sir, that is the purpose of the charge we published.

Record.

[fol. 1903] Mr. Enoch: Well, we assume that inasmuch as you put these charges in there, that they are reasonable for the services they purport to cover.

Mr. Belnap: I think that would be a fair assumption.

Mr. Enoch: I am talking about the handling charges.

Mr. Belnap: I think that is a fair assumption.

The Witness: In connection with Exhibit No.——

By Mr. Belnap:

Q. As to that, however, let me ask you this: Mr. Oliphant, when you do handle this grain, you provide special equipment, clam-shell or something like that to handle it, do you not?

A. I am going to describe that in just a little while.

Q. All right, we will wait until you get to it.

A. In connection with Exhibit No. 66, I wanted to direct attention to the rates being subject to Item No. 60 of the tariff, which states specifically that the rates do not include cost of elevation, loading of freight into barges, unloading freight from barges, switching, demurrage, drayage, wharfage, et cetera, and also to Item 145, where the handling charges are specifically published, where such handling services are performed by the Federal Barge Lines.

I desire also to call attention to Item No. 160, providing for the detention charges on barges of the Federal Barge Lines.

For the purpose of this proceeding, it might be well at this point that I explain for the record the general mechan-
[fol. 1904] ical services involving the handling of bulk grain on the line-haul rates of the Federal Barge Lines. Therefore, I will endeavor to describe generally the operations at Kansas City where grain would originate, in so far as the Barge Line is concerned, at St. Louis, where it may originate or terminate so far as our service is concerned, and at Peoria and Chicago, where the Barge Line's hall would terminate on grain destined beyond.

First of all, bulk grain transported on our unfiled rates is subject to a booking requirement contained in our tariff 12-B, which is Exhibit No. 66. Prior booking for a fixed amount and a definite time when the freight will be ready for forwarding from point of origin must be arranged with the traffic manager of the Federal Barge Lines. When this requirement has been complied with, the Federal Barge

Lines will place the empty barge for grain loading at the elevator at Kansas City, where the loading of the grain is done through the elevator and under the supervision of the elevator operator.

The purpose of this booking requirement is to permit the supervision of the empty equipment so as to leave as much flexibility in the movement of these empty barges and provide, at the same time, an economical handling for them. In other words, when we know that a certain number of barges or that a barge is going to be required at a port and that traffic is booked, why, it permits the placing of that empty barge or the dropping off of that barge in one of the [fol. 1905] regular tows and minimizes the cost of operation to an extent. The same thing applies when the latest barge is ready for taking away from the port where it was loaded.

Q. What is the capacity of your barges?

A. They run in various capacities. We have about 227 barges that are used on the Mississippi section. By Mississippi section, I am including in there the Illinois as well as the Missouri Rivers. And we have about 51 Warrior River type barges which are used on the Alabama section. The Warrior type barges are interchangeable on the upper Mississippi. They are a smaller type barge. The Mississippi barges generally run from about 1,800 tons to 2,100 tons, 2,125 tons.

Q. And your tows with motor barges will run up to how many barges, on occasion?

A. We have had as high as nine barges in a tow.

Q. Loaded barges?

A. Yes. The barges that were in that nine-barge tow ran around 1,500 tons to the barge.

By Mr. Brown:

Q. Northbound?

A. Yes.

By Mr. Belnap:

Q. When you speak about tonnage, you are not talking about exclusively grain, are you, Mr. Oliphant?

A. When I speak of this nine-barge tow and 1,500 tons to the barge, I am not confining it to grain, no.

Q. You have all sorts of commodities?

[fol. 1906] A. That is miscellaneous commodities. Grain has been transferred at Kansas City, Missouri, direct from cars into barges by means of a hopper constructed of wood to which a gravity chute of similar construction is attached. This latter service is performed by the Barge Line, and a charge of 39 cents per ton at Kansas City is assessed in addition to the line rates.

Q. Every place else it is 50 cents a ton or 50 cents a ton plus Ex Parte 123 increases?

A. 55 cents a ton.

Q. When that barge is loaded, is there bill of lading issued to the shipper?

A. Yes, the uniform bill of lading, by that I mean the standard form that is reproduced in the Consolidated Classification is used by us, yes.

Q. Who executes that bill of lading?

A. The shipper executes it, our agent signs it, and when our—when it is traffic loaded at a non-agency port, the bill of lading is sent to the nearest agency port, just in the same manner that the rail lines handle their non-agency stations and the agent at the closest agency point signs the bill of lading.

Q. However, you place a barge for grain loading before you have any written document relating the shipment at all, do you not, containing an order for a barge?

A. Other than the booking requirement. We will place [fol. 1907] a barge without any other document than the booking requirement.

Q. Proceed, please.

A. After this barge is loaded, and if St. Louis happens to be the port of discharge, the barge is placed at an elevator, which is equipped with a marine leg. I think there is only one of such elevators capable of handling that traffic at St. Louis. In other words, there is only one with a marine leg. This marine leg is lowered into the barge and the grain sucked in through the elevator, and transfer into cars may be made through this facility. Unloading from cars into barges at St. Louis may also be accomplished through the same facility, and by use of a similar marine leg.

At Peoria, Illinois, the grain may be discharged through the elevator in the manner just described for St. Louis, or it may be handled through our bulk terminal by means of a clamshell bucket. This latter operation consists of lowering a steam shovel into the barge; the grain picked up

by this method is then dumped into a constructed hopper, where it is fed by gravity into rail equipment. There is a charge of 2¾ cents per hundred weight for such services. This method of transfer from barge to cars was first successfully used at Memphis, Tennessee. Grain dealers at that point have expressed no dissatisfaction with this method of unloading. In fact, the method has proven quite satisfactory.

Q. Mr. Oliphant, when that method is used, the discharge [fol. 1908] is into a car placed alongside the barge at your warehouse?

A. Yes. There is a tarpaulin spread over the space from the barge to the car, or to the hopper where this grain is poured into from the barge. The steam-shovel is loaded into the barge, picks up this grain and any of it that may sift through the shovel drops into this apron. After the barge is completely discharged, then the grain that may have flown through the shovel is picked up from this apron and put through this hopper into the cars.

Mr. Enoch: I would like to ask right here if this is all preliminary to something that is going to burst on us all of a sudden that isn't—what has this got to do with the case?

Mr. Belnap: This is a description of water service.

The Witness: I think the Commission in interested in knowing how we handle our traffic.

Mr. Belnap: I thought you had some question in mind as to whether he wasn't recognized to be a common carrier, couldn't have these rates apply, some jurisdiction of the Commission as to whether the man was a common carrier by water, and I think that that would have to be established by evidence.

Mr. Enoch: The statute says that the Federal Barge Lines is a common carrier and I don't think we need any evidence on that.

Mr. Belnap: Some of you fellows might overrule it some time.

[fol. 1909] By Mr. Belnap:

Q. Mr. Oliphant, your terminals are all served by railroad tracks, are they not, connecting with the various truck lines serving the point?

A. Generally speaking, I would say that is true. There may be some exception on the Illinois River. But if by

terminal you mean a place where we maintain an agency, I would say yes. They are all served by rail connections.

Q. And that would be true at Kansas City, St. Louis, Peoria?

A. Chicago.

Q. Chicago?

A. Yes.

Q. And if the grain was to move beyond by car, the car would be ordered placed alongside the barge where that sort of a transfer could be made?

Mr. Enoch: What point, now? What point?

Mr. Belnap: Peoria. He has just described Peoria.

The Witness: Well, at Peoria, if you want to use that as an illustration——

By Mr. Belnap:

Q. Yes.

A. At most times it is not necessary to we order the car. Our service is to and from Peoria, and in a great percentage of the cases, we have empties there which we have, take freight out of the cars and place it in our barges for outbound movement and we may move that car, if it is in proper condition for grain, to transfer the grain from that barge [fol. 1910] into the car. Otherwise, we would order a car.

Q. Whose rails serve your terminal at Peoria?

A. The Illinois Central and the—I think the T. P. W. gets in there and I believe the Illinois Central, direct.

Mr. Enoch: I don't like to interrupt you any more, but I would like to have you state what the purpose of all this is.

Mr. Belnap: I am describing the carrier's operations.

Mr. Enoch: Just a matter of description?

Mr. Belnap: That is all.

Mr. Enoch: You are not going to raise any point about this that we are being lured into a sense of security upon by the easy way in which this goes in?

Mr. Belnap: Thanks for the compliment. But I think not. I expect to point out my tariff references as we go along.

Mr. Cole: I thought that was coming.

By Exam. Taylor:

Q. Well, at Chicago you don't handle grain?

A. I was just coming to that. At Chicago, the grain is

all handled through elevators and under the supervision of elevator operators.

By Mr. Belnap:

Q. Those are special elevators, or do you know as to that?

A. I don't know, but I think they are.

Q. I will cover it by someone else.

A. Where elevators are used for discharge or loading of barges, the expense thereof is in addition to the line rates, [fol. 1911] borne by the shipper and paid to the elevator operator. In the schedules under suspension the carriers are attempting to establish proportional rates on grain so restricted as to make them inapplicable on water-borne grain unless the rates of the water carrier are on file with the Interstate Commerce Commission.

Q. By "water-borne," you mean on the river there, do you not?

A. Yes, where I refer to water-borne traffic, I refer to the operation on the river.

Such a publication, we believe, is illegal. This opinion is supported by the Commission's decision in Washington Coal Producers Association vs. U. P. R. R. Company, 129 ICC 490, at page 500, where the Commission stated that under the provisions of paragraph 13 (c) of Section 6 of the Act, they are authorized to prescribe proportional rates to ports applicable to traffic moving beyond by water, and such rates may differ from the corresponding local rates. The Federal Barge Lines is a common carrier in every respect of the word, even when consideration is given to the unpublished port-to-port rates. Consequently, we believe that the proportional rates under suspension are of the character contemplated by paragraph 13 (c) of Section 6 of the Act.

Q. Proportional rates which were held in effect by reason of the suspension which you believe to be of that character, is that true?

A. That is right. Furthermore, these same rail carriers [fol. 1912] in the schedules under suspension propose the application of these same proportional rates to ex-lake grain in connection with rates of water carriers who are not common carriers in the same sense as the carriers on the inland streams. Such a publication, while lawful from a tariff standpoint, nevertheless, does not provide for pro-

portionals of the character recognized in paragraph 13 (c) of Section 6 of the Act, as stated in 174 ICC 459, page 471, Cast Iron Pipe and Fittings, also Allenwood Steel vs. Alabama Great Southern Railroad Company, 190 ICC No. 3, page 11.

Under Section 500 of the Transportation Act of 1920 it is stated that it is the policy of Congress to promote, encourage, and develop inland waterway transportation facilities in connection with the commerce of the United States. This policy was reiterated in Section 3 of the Inland Waterways Corporation Act, as amended. Yet, in spite of this declared policy of Congress, the rail carriers, parties to the suspended schedules, by reason of the fact that Congress made no provision for placing the port-to-port rates of the inland water carriers under the jurisdiction of any regulatory body, are attempting to destroy what Congress sought to preserve and expand to a point where private persons, companies, or corporations would be ready and willing to engage in common-carrier service on such streams.

The Federal Barge Lines, in I&S Docket No. 4280, reported in 225 ICC 62, Proportional Grain Between Federal [fol. 1913] Barge Lines Ports, was a respondent and appeared in justification of an attempt on its part to file with the Interstate Commerce Commission port-to-port rates on grain. The Federal Barge Lines in this proceeding was defending a tariff containing the port-to-port rates on grain which it was seeking to have the Commission accept for filing so as to permit the application of proportional rates in connection with certain proportional rates via rail east of the Mississippi and south of the Ohio River gateways. The Commission in that case stated on page 69 that they had no jurisdiction over the proposed rates, unless and until the railroads agreed to operate through rates under a common arrangement and continuous carriage.

Q. And do you mean rail lines who participated in that disclaim their willingness to operate common arrangement through routes with you?

A. They did. Thus, it may be seen that if the inland water carriers are without a means of filing their rates, rail carriers will, by restrictions such as the nature of those in the schedules under suspension, be in a position to eliminate competition of the water carriers on this grain traffic

and deny the shippers desiring to use the lower cost transportation the privilege to which they are entitled. That concludes my direct statement.

Mr. Belnap: I have some questions.

Exam. Taylor: Proceed.

[fol. 1914] Mr. Enoch. Will you read that last statement of Mr. Oliphant's?

(Record read.)

By Mr. Enoch:

Q. You say if they are without a means of filing the rates?

A. Yes.

Q. You don't say they are?

A. The I&S 4280 is indicative of that.

By Mr. Belnap:

Q. Mr. Oliphant, in connection with the rates shown in your Exhibit 66 and to traffic handled thereunder, have you conferred with the carriers and entered into any common arrangement for a through route?

Mr. Enoch: Just a moment. What are you talking about, the commodity?

Mr. Belnap: Just what I ask him, the tariff——

Mr. Enoch: The commodity?

The Witness: There is only one commodity in there; all grain.

Mr. Enoch: Name the carriers.

Mr. Belnap: Pardon?

Mr. Enoch: Name the carriers.

Mr. Belnap: What carriers?

The Witness: Wait until you hear my answer.

Mr. Enoch: You said the carriers, and I was wondering if you would specify the carriers, if you are expecting to [fol. 1915] get an affirmative answer.

Mr. Belnap: I am not expecting to get an affirmative answer.

The Witness: No. In connection with the rates that are published in Exhibit No. 66, we have not approached the carriers nor do we have any common arrangement with rail carriers.

By Mr. Belnap:

Q. As to the port-to-port rates on grain which are on file in your ICC No. 148, are those rates on grain in packages, you said?

A. Those rates are on grain in packages in carload quantities.

Q. Now, before you put those tariffs on file with the Commission, did you meet with the carriers, the rail carriers, that is beyond the ports, and enter into some formal arrangement with them about having through transportation take place?

A. No, sir. And that tariff——

Q. Has that matter ever been a matter of discussion between you and the rail carriers?

A. No, it has not, and that tariff, if you will recall, in the petitions for suspension of the present tariffs that are now under suspension, that the rates in that Tariff 31 were not exempt from this restriction.

Q. That is the September 15th filing?

A. The filing prior to this last—to the suspension of the schedules which are now under suspension.

Q. The carriers first started to restrict their propor- [fol. 1916] tionals so they wouldn't apply in connection with that rate?

A. In connection with those rates. Then W. J. Small and Company of Kansas City filed a petition for suspension of that publication, and for some reason or other, the rail carriers then excluded from this restriction the rates published in Item 3662-C of our Tariff 31-J, ICC No. 148.

Q. Did they take that matter up with you or——

By Mr. Enoch:

Q. Where are you now? Down at Kansas City?

A. That is where the rates in this item applied from.

Q. Are you talking about some tariff now you haven't referred to before?

A. No, sir.

Mr. Belnap: No, the same one.

Mr. Enoch: What tariff is it?

Mr. Belnap: ICC 148, Federal Barge Lines.

Mr. Enoch: In the record here?

The Witness: It is named in the suspended schedules of the rail carriers.

Mr. Enoch: Have you got it in this case here?

Mr. Belnap: Sure.

Mr. Enoch: What is the exhibit number?

Mr. Belnap: 2. No tariff items there. The tariff number—I mean the tariff item is referred to there.

Mr. Enoch: Is the tariff in evidence?

Mr. Belnap: The tariff itself? No.

[fol. 1917] The Witness: Refer[illegible] to it is.

By Mr. Belnap:

Q. Can you tell me the rates from Kansas City to St. Louis, Peoria and Chicago, named in that tariff?

Mr. Enoch: I object to that.

Mr. Belnap: Why?

Mr. Enoch: Because I want to see the tariff. You are bringing up something here that hasn't been in here.

Mr. Belnap: Normally, we tell rates, Mr. Examiner, by having the witness testify that such and such rates are found in the tariff.

Exam. Taylor: Is the tariff you refer to under suspension?

Mr. Belnap: No.

The Witness: But it is referred to in one of the suspended issues of the rail carriers.

By Exam. Taylor:

Q. Which one?

A. I don't know the ICC number, Mr. Examiner, but provision is made in the suspended issues.

Mr. Belnap: Wait just a second. Let's take proposed Rule 40. Mr. Examiner, if you will look on page 7, Mr. Tannehill's exhibit—is it 1 that has got all the tariffs, Exhibit 1?

Exam. Taylor: Page what?

Mr. Belnap: Page 7, you will find one reference to it under proposed Rule 40. If you will look at the third paragraph in that, after the heading. You find it? "Rates will also apply on shipments moving from Kansas City, Mis-[fol. 1918] souri, to Chicago, Illinois or Peoria, Illinois, under rates published in item 3632 of Federal Barge Lines' freight tariff No. 31-J, ICC No. 148, supplements thereto,

or successive issues thereof." Now, that similar provision is found in all of the tariff rules under suspension.

Exam. Taylor: Now, what does your objection go to, Mr. Enoch?

Mr. Enoch: I want to be sure that the tariff which he is asking Mr. Oliphant to express some opinion upon is before the Commission in this case.

Mr. Belnap: It isn't under suspension. It is before the Commission, I am sure of that.

Mr. Enoch: In evidence here?

Mr. Belnap: The tariff itself has not physically been offered in evidence.

Mr. Enoch: Then, I don't think there ought to be any discussion here by anyone, attempting to tell what the tariff shows.

The Witness: Well certainly, Mr. Examiner, if I want to tell what the rates are from Kansas City to St. Louis, Peoria and Chicago as published in that ICC number, I don't see how that could be objected to.

Mr. Belnap: I don't think we have any rate tariff in here yet, Mr. Examiner. We have got lots of testimony as to what rates are. This is the same sort of thing Mr. Enoch——

Mr. Brown: Mr. Belnap, if you would tell Mr. Enoch that [fol. 1919] that particular item does not apply to bulk grain, that would remove his objection.

The Witness: We have stated that.

Mr. Belnap: He stated that.

The Witness: Grain in packages in carload lots.

Mr. Enoch: Does it move any grain?

Mr. Belnap: We are going to tell what it moves, Mr. Enoch. We are going to put in the facts.

Mr. Enoch: I think I will stand by the objection. This is something that is brand new to me and frankly, I am in a position here where I don't know what he is shooting at.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: The objection will be noted on the record. Proceed and answer the question.

The Witness: Will the reporter please tell me what the question was? I think it was name the rates from Kansas City.

By Mr. Belnap:

Q. What are the rates, yes?

A. The rates from Kansas City to Chicago, in item No. 3662-C of supplement 13 to tariff 31-J, ICC No. 148, are 14 cents to Chicago, 12 cents to Peoria and 10 cents to St. Louis and East St. Louis.

By Exam. Taylor:

Q. On package grain?

A. On package grain in carload lots.

Q. In carload lots?

[fol. 1920] A. Minimum weights as described in the item in the same issue.

By Mr. Belnap:

Q. And it is those rates which you said are made by——

Mr. Enoch: I object to any further leading questions. We have been pretty good to you, Mr. Belnap. I think you ought to ask the witness to do the testifying.

Mr. Belnap: I wanted to be sure that these were the same rates he was talking about, Mr. Enoch, when he told how certain rates were made.

Exam. Taylor: What is the question, now?

By Mr. Belnap:

Q. Were you referring to those rates when you described how certain rates contained in that tariff issue were constructed?

A. Yes, those are the rates that I referred to when I stated they were made in the same manner as the bulk port-to-port rates were made. That is the two mill per ton per mile basis, plussed by handling charges of 2½ cents at port of loading and port of discharge, and increased by the Ex Parte 123 increases.

Q. Your Exhibit 64 shows your rate on bulk grain from Kansas City to Chicago. In fact, it shows two different rates. Now, would you use those rates as a basis and tell us how you construct 14 cents to Chicago.

A. No, you couldn't use those rates as a basis, because you originally take your two mills per ton per mile basis, and to that add your 2½ cents or 5½ cents to include both [fol. 1921] terminals and then increase them——

Q. Not 5½?

A. Yes.

Q. Twice 2½ is how much?

A. 5. After you add your 5 cents to your 2 mill basis, then increase that under 123, the 10 per cent increase.

Q. And that brought you to 14 cents——

A. The published rate in that ICC 148, 14 cents.

Q. What type of grain in packages has been transported under these rates in your tariff on file with the Commission?

A. The only tonnage that I know of that has moved on those rates is alfalfa meal.

Q. On commodities generally, what is the basis for the Federal Barge Line port-to-port rates?

A. On general commodities, carload basis, the usual method of determining the rates is applying 80 per cent of the all-rail rate applicable between the ports between which these rates are established.

Q. Do these rates on grain products in carloads, port-to-port, Kansas City to St. Louis, Peoria and Chicago, conform to that basis?

A. No, sir.

Mr. Enoch: I object to that. Have you got any movement of grain products?

The Witness: Alfalfa meal is a grain product and the [fol. 1922] rates are applicable under that interpretation.

Exam. Taylor: Do you withdraw your objection?

By Mr. Enoch:

Q. We are speaking of alfalfa meal?

A. Speaking of grain products, and alfalfa meal is a grain product, and alfalfa meal is the only traffic we have moved on these rates in 31-J.

By Exam. Taylor:

Q. In packages?

A. In packages in carloads. What was that question, now?

Mr. Belnap: I don't know if Mr. Enoch withdraws his objection.

Mr. Enoch: Yes.

Mr. Belnap: Read the question.
(Question read.)

The Witness: By "that basis," you mean the 80 per cent basis?

By Mr. Belnap:

Q. Yes, sir.
A. No, they do not.
Q. Will you tell us what are the local rates on alfalfa meal and other grain products from Kansas City to Chicago, Peoria and St. Louis?
A. All-rail?
Q. All-rail.
A. The all-rail rate on alfalfa meal, local rate, is 21 cents.
Q. To where?
A. From Kansas City to St. Louis. From Chicago—or [fol. 1923] rather from Kansas City to Chicago, the all-rail rate is 25 cents. Those rates are published in Agent Kipp's Tariff No. 332-B, ICC No. A-2942.
Q. Did this alfalfa meal which you transported on those rates you described have any prior rail transportation?
A. To my knowledge, all of that alfalfa meal was trucked into Kansas City. And the basis for that conclusion is that we got stuck with some cars because of low water on the Missouri River, and since we had signed a contract, a bill of lading contract to move this traffic from Kansas City to Peoria, it was necessary that we pay the local rail rate. In other words, we had to pay the freight charges and collect our all-water rate from the shipper in order to carry out the contract that we had entered into.
Q. Where did you transfer that from, those shipments; at Kansas City?
A. At Kansas City. And I should have followed up that we tried to get the shipper to take his grain back and ship it and use rail billing to get a balance of the through rate on it, but he said, "Nothing doing," he had no rail bill to surrender because the traffic came in by truck.
Q. Are you familiar with the adjustment of rates east of Chicago which are here involved, Mr. Oliphant?
A. As to how they were made or why they were made?
Q. And the character of the rates?

[fol. 1924] A. Only to the extent of knowing that the proportional rate is lower than the local rate.

Q. They are separately established factors, are they not?

A. Separately established factors and must have prior transportation into Chicago.

Mr. Belnap: That is all I have.

Exam. Taylor: Any questions by protestants? (No response.) Cross examine.

Cross examination.

By Mr. Cole:

Q. Mr. Oliphant, do you know what the rail proportional rate is from Kansas City to Chicago?

A. I think it is 16 cents, but I can't give you tariff reference, but I believe it is in one of the exhibits.

Q. That is near enough. And what is it from Kansas City to Peoria?

A. I don't know, but I imagine it would be 2 cents under Chicago.

Q. And what is the rail proportional from Kansas City to St. Louis?

A. I think it is 11 cents, Mr. Cole.

Mr. Belnap: 12.

The Witness: 12 cents.

By Mr. Cole:

Q. Are not the Federal Barge Line rates from Kansas City to Chicago, Peoria and St. Louis uniformly the same relative differences over the rail proportional rates?

Mr. Belnap: Over or under?

[fol. 1925] Mr. Cole: Under.

The Witness: Are you speaking now of the bulk rates on grain?

By Mr. Cole:

Q. No, I am speaking about these rates that the railroads have especially provided for in these tariff references that will continue——

A. The rates in 31-J, you are talking of now?

Q. Yes.

A. I think they reflect the same differences. Let's see. Chicago is 14 cents, Peoria is 2 cents under, 12 cents.

Q. That is on the package goods?

A. That is right, carload package goods.

Q. Then, Mr. Oliphant, on a movement from Kansas City through either Chicago, Peoria or St. Louis, whether that movement is via the barge liens or via the rail liness, will the various gateways be equalized on the through movement of the grain?

A. You are considering the movement east of those gateways? In other words, the through transportation?

Q. Yes.

A. I don't know.

Q. You don't know as to that?

A. No.

Q. I noticed in your tariffs here, that wherever your operation is referred to, you refer to barges and you refer to barge lines. In the language of your associates and [fol. 1926] yourself, have you ever interpreted the words "boat line" as referring in any way to a barge line?

A. I would say they were—those terms were synonymous or interchangeable.

Q. Then if you find something that sets up the wording "boat line," you may as readily interpret that as referring to barge lines as though we were referring to a boat?

A. I would say if you had barge line service there, yes.

Q. I see.

A. That the term would be interchangeable.

Q. Your Exhibits 63 and 64 seem to be concerned exclusively with two terminals, Chicago and St. Louis. We are now considering the application of the proportional rates beyond Chicago. Now, calling your attention to that St. Louis situation, was there an application on the part of the railroads some little time ago to cut out and destroy the application of the proportional rates beyond St. Louis to barge line grain?

A. You are speaking now of some case that may have been before the Commission.

Q. Yes, sir.

A. On traffic destined into the Southeast?

Q. Yes.

A. Yes, there have been several cases before the Commission, and in fact there is a proposed report now in I&S 4208, but in those cases that so far have come before the [fol. 1927] Commission, you have a different situation in

that the rates that were restricted into the Southeast were restricted as to all-water operations; whereas this 4718 case restricts the application of proportional rates east of the gateway to ex-river grain but does not restrict it on ex-lake grain, although I consider both the water lines operating on the Great Lakes and the water lines operating on the river as not being subject to any jurisdiction on its port-to-port rates, and to that extent are in the same category.

Q. Well, what is the St. Louis situation where the rail lines cut out the further application of proportional rates to ex-water grain, is that 203 ICC 385? I just want to get the correct reference.

A. I don't know what the citation is, but I can give you these cases. I&S 3928 was your first case, where the rail carriers attempted to eliminate the application of the proportional rates on ex-river grain. After the decision in that case, we had a formal complaint filed by the Farmers National Grain Corporation, and the ICC docket in that case is 266965. A proposed report was issued in that case and at just about that time, some new changes took place in the proportional rail rates by reason of the fact that the carriers wanted to reduce those proportional rates and establish proportional rates from other ports where they had none before and at the same time increase the local rates which were then applicable on ex-barge grain. That resulted in I&S Docket No. 4208. And the Commission then, [fol. 1928] by request of, I think, counsel for the Farmers National, consolidated this ICC docket No. 266965 with the general investigation in ICC docket 17000, Part 7-A, which included I&S 4208 and this Farmers National case. Now, that is a amtter of proposed report.

Q. Mr. Oliphant, just in order that we may get a notation on the record about this thing, in that proposed report in 4208 did not the Examiners propose to find that the proportionals need not be applied on ex-barge from the river ports, and then did not the Examiners in the same proposed report institute or recommend or prescribe a basis of proportional rates somewhat lower than the locals applicable to ex-water grain handled from the Pacific Coast to the Southeastern ports which would then move inland?

A. I am not——

Mr. Belnap: Just a minute. I want to object to any question about the Examiners. I think the Commission's

rules of practice are you can't refer to proposed reports in other proceedings.

Exam. Taylor: Objection sustained.

By Mr. Cole:

Q. In your Exhibit 64, I note that under column D, there are, opposite Kansas City, an item of 3.95 and 4.70, and as I look at that exhibit, those are the only exceptions from the basis 4.75 or 5.50, as it appears in the other items. What is the difference there, Mr. Oliphant?

[fol. 1929] A. That is brought about by the difference in the charge of transferring grain at Kansas City. The charge there is 39 cents.

By Mr. Belnap:

Q. A ton?

A. Per ton. Whereas at St. Louis and the other ports, it is 2¾ cents per hundred pounds or 55 cents per ton. That makes up your 3.95.

By Mr. Cole:

Q. And that is the only place that that charge——

A. That is correct.

Q. —varies? All the other origins, the charge if you do the service is the same?

A. Is 2¾. The only difference in that charge is at Kansas City and Cairo; 39 cents a ton on those two ports against 55 cents a ton at the other ports.

By Mr. Belnap:

Q. You said you added 2¾ to your 39 cents a ton. Just look at the figures.

A. At St. Louis.

Q. Is that what you add?

A. That is what Mr. Cole was dealing with: St. Louis. Yes, that is 55 cents a ton and 39 cents a ton; results in 4.70.

Q. The 3.95 is the Chicago and that is the——

A. Chicago. You have got 2 cents at the elevator which is 1½ plus half a cent.

Mr. Cole: That completes my cross examination.

Exam. Taylor: Mr. Enoch.

[fol. 1930] By Mr. Enoch:

Q. Mr. Oliphant, in view of your showing on Exhibit No. 63, what is the interest of the Federal Barge Line in this proceeding here?

A. If you will notice, Mr. Enoch, there were 40,312 tons of wheat that moved from Kansas City to Chicago. That is eligible for transportation east of Chicago at the proportional rates but that will not get the proportional rates if these restrictions are permitted to become effective.

Q. Does that originate at any Illinois points?

A. We have some Illinois traffic there to St. Louis, for example. And you have some East St. Louis to Chicago traffic. You have Kampville, Illinois, to Chicago and St. Louis, both. In other words, you have a total tonnage into Chicago for 1939 of 43,292 tons, which would be excluded from the use of the proportional rates east of Chicago if these restrictions were permitted to go into effect.

Q. You know, don't you, that the level of the proportional rate east of Chicago was not gauged either by the carriers when they made them or prescribed by the Commission by reference to any inbound charges on water-borne traffic over the Illinois River, do you not?

A. I don't know that the proportional rate east of Chicago was established with any consideration as to how it came into Chicago.

Q. Don't you think it had some reference to the propor-

[fol. 1931] tional rate from Chicago and St. Louis?

A. I am speaking of the proportional rate from Chicago to the North Atlantic.

Q. Yes.

A. I don't know that that is contingent upon the type of transportation that is used into Chicago.

Q. Do you think that the Commission, in so far as the question was before them, made the proportional rates to Chicago with reference to the level of the proportional rates eastbound from Chicago and St. Louis?

Mr. Belnap: Might I inquire what case Mr. Enoch is talking about?

Mr. Enoch: 15037 is one and supplemental proceedings in connection therewith. Also 17000, Part 7.

Mr. Belnap: I don't understand 15037 involved proportionals to any of this territory.

Mr. Enoch: It did to CFA territory, and in 17000, the Commission dealt with through business and had proportional rates in mind when they prescribed the proportional rates from the Missouri River to Chicago, Peoria and St. Louis.

The Witness: I don't know what the Commission had in mind when they prescribed the proportional rates, but I certainly don't think they had in mind restricting them to one type of transportation.

By Mr. Enoch:

Q. Do you think that the level of a proportional rate, a [fol. 1932] true proportional rate should be gauged by the amount of the inbound rate?

A. I don't think so, because—no, I don't, when it is published as a proportional rate.

Q. Do you think the Commission could prescribed with propriety a true proportional rate without being apprised of the inbound rate and its measure?

A. If it is to be published as a proportional rate without any regard as to where it is coming from and applicable to traffic having prior transportation, I will say yes.

Q. Now, what is going to happen to the Federal Barge Line, in your opinion, if the Commission allows these provisions under suspension to be effective?

A. You mean what is going to happen to the Federal Barge Line?

Q. Yes and its business from Chicago to Kansas City.

A. Speaking of grain?

Q. Yes.

A. I assume they would go out of the grain business.

Q. And you say you are powerless to protect yourself in that situation?

A. Well, if the carriers east of Chicago take the position that the carriers south of the Ohio and Mississippi Rivers took and east of the Mississippi River, I would say yes, because they refused to join in through rates.

Q. Are you entirely helpless to protect yourself in con- [fol. 1933] nection with barge movement to Atlanta, Georgia, for instance, barge and rail?

A. Yes, sir.

Q. Now, you referred to paragraph 13 of section 6 and you mentioned only one of several powers there that may

be exercised by the Commission, namely, the proportional rates. Now, you didn't name them all and didn't attempt to, did you?

A. I don't think so.

Q. And you are familiar with the jurisdiction that is given to the Commission there to prescribe joint one-factor rates where traffic may be brought to a port by water and thence beyond by rail, moved beyond by rail?

A. Yes.

Q. The Commission is empowered for that second means of transportation, to prescribe joint one-factor rates in that connection?

A. Yes, that is true, but here is what would happen. We have an order from the Commission under Ex Parte 96, under which we could establish through rates on grain on those Mississippi River counties south of the Ohio, but those rates would not move anything, because the rail rates could not be used as a measure to establish these through rates. In other words, your rail rate breaks would move the rail traffic, but in establishing our joint one-factor rates, it would reflect no difference on these rates through those gateways.

[fol. 1934] Q. There isn't anything to prevent your going to the Commission and asking the Commission to exercise its power to prescribe joint one-factor rates from points at which you originate grain and delivering that grain to carriers for further transportation?

Mr. Belnap: Mr. Examiner——

The Witness: We have done that.

Mr. Belnap: Pardon me.

Exam. Taylor: Sure.

Mr. Belnap: Might I inquire if what Mr. Enoch has in mind is that the protestant has no rights as a protestant here because it can go out and file a formal complaint?

Exam. Taylor: No, I don't understand it that way.

Mr. Enoch: No.

Exam. Taylor: He says if the respondents were successful in this case, would he be shut off entirely.

Mr. Belnap: He is ridiculing the issue here as to whether they should handicap and disadvantage the barge traffic. Why don't you ask about it? Maybe you have lost me.

Mr. Enoch: Mr. Oliphant is telling the Commission that if it takes the action here in this case which he opposes,

they are absolutely helpless and I am asking him if he is fully apprised of that fact.

Mr. Belnap: I follow it. Pardon my interruption.

The Witness: Yes, I know we can go to the Commission [fol. 1935] and ask for joint one-factor through rates. In fact, that is a question involved in 26712, that is I. C. C. docket 26712.

By Mr. Enoch:

Q. Have you ever initiated a proceeding before the Commission where you seriously fought to have the Commission prescribe joint one-factor rates with rail carriers on grain which you originate?

A. Well, we initiated this I. C. C. Docket 26712, which is now under litigation. We asked for one-factor through rates on grain as well as other commodities are involved, but particularly grain in there.

Q. Now, did you get it, what you asked for?

A. That is under litigation. It hasn't been decided yet. Now, again in I. & S. Docket 4208, we offered to establish through rates with the rail carriers, one-factor through rates. That is before the Commission also.

Q. You didn't initiate that proceeding, did you?

A. Well, it was an I. & S. case. We initiated it to the extent of asking for distinction of the rail rates.

Q. Now, that question might well have been originated by the Federal Barge Lines. A proceeding in which it was very much interested was instituted. You didn't go out in front, the Federal Barge Line, but it had the Farmers National Grain Corporation file that petition, didn't it?

A. The Federal Barge Line didn't have the Farmers National Grain Corporation file any complaint.

[fol. 1936] Q. Will you tell me this——

A. We participated in that docket.

Q. And quite extensively?

A. As an intervener, yes.

Q. And with great enthusiasm?

A. And in that docket we also asked for the establishment of one-factor through rates.

Q. Now, isn't it a fact that the Federal Barge Line does not want joint one-factor rates?

A. I don't know why we would ask for them if we didn't want them.

Q. Did you ever ask for them in connection with the business here on the Illinois River?

A. We have asked for joint—no.

Q. And if you are permitted to apply to grain brought to Chicago, for instance, by the Federal Barge Line or have applied the outbound proportional rate, that may be applied then in connection with a shipment which you might transport from Morris, Illinois, or some other origin point on Monday for 5 cents and on Tuesday for 4 cents and on Wednesday for 3 cents, might you not, and the Commission would be powerless to say anything about that inbound charge?

A. Well, I don't know why you would make reference to such things that you don't positively know happened. I don't know of any cases and I have stated in my direct [fol. 1937] testimony that the rates and the basis for determining the grain rates for the Federal Barge Line have been in effect for a number of years and we haven't departed from that basis. Now, if it was a customary practice of ours to change these rates overnight, as you make reference to, then I would say you had a different situation: Mr. Enoch.

Q. Well, but suppose some hazard or contingency arose whereby the people who were using your transportation at a certain rate were, because of some reason, out of the competition and they came to you and said, "You are charging me 5 cents and now I want 3, and unless you give me 3, I can't use your barge." You could give him 3 if you wanted to do it, couldn't you? And you wouldn't have to say anything about it?

A. You are talking about 3. You would have to confine yourself to some particular ports between which we would apply that 3 cents, for example.

By Exam. Taylor:

Q. Following that up on your Exhibit 63, the last two years you have shown no traffic moving from Morris, Illinois, to Chicago. Is that because of your competitive rate by these other barge lines?

A. Well, I imagine that is, Mr. Examiner, since the other barge lines have indicated they have moved tonnage from Morris, Illinois, and since the rate has been shown in the

record as 4⅛ cents; that is a lot lower than what our rate is.

Q. Do you know what your rate would be?

[fol. 1938] A. From Morris?

Q. On your so-called normal basis.

A. Under the normal basis, the Morris to Chicago rate is shown on page 17 of Exhibit No. 66, and that rate is 6½ cents, free on the barge and free off.

Q. So that if you wanted to get any of that traffic out of Morris, you would have to come down over a cent and a half a bushel; a cent and a half a hundred pounds?

A. We would have to come down to meet the competition, I guess, unless a shortage of equipment existed and we would get the traffic on the higher rate. But now, of course, I don't want you to understand that we think this 4⅛ cents is unreasonably low or that our 6½ cents is to be used as a yardstick for determining whether the 4⅛ cents is low, 4⅛ cents of this private carrier or common private carrier, whatever you term it, because our traffic department has made studies of this grain movement and we could, if we desired, go a lot lower than this two mills per ton per mile. But we take the position that rather than reduce these rates to a basis that would affect the whole structure that we apply all over the system, we would just sooner let the carrier that is handling it go ahead and handle it. In other words, we are not going to reduce our rates simply because we can reduce them and make money, to try and put some privately owned carrier who may be acting as a common carrier out of the business.

[fol. 1939] By Mr. Enoch:

Q. Wait a minute, who is acting as a common carrier?

A. Well, I understood that Mr. Mechling testified here that he was a common carrier operator.

Q. You are very much in error about that.

A. He is privately owned, but I am positive he stated——

Mr. Enoch: I move that the statement by Mr. Oliphant indicating that Mr. Mechling is a common carrier be stricken from the record.

Exam. Taylor: The record will speak for itself.

The Witness: I am not saying that he is a common carrier. If he is a common carrier, I refer to him as a pri-

vately operated common carrier, if he is a common carrier, and I believe the record will show that.

Exam. Taylor: Had you finished, Mr. Enoch?

Mr. Enoch: No.

By Mr. Enoch:

Q. Now, the Federal Barge Line will never be able to get one bushel out of these Illinois points to Chicago until it gets some of these trick barges that are being used in the transportation of that corn, isn't that right?

A. Oh, yes, if we wanted to reduce our general basis of established rates to meet this competition.

Q. How would you handle it, over the same route it is being handled now?

A. Yes.

[fol. 1940] Q. With the Federal Barge Line barge?

A. Sure.

Q. Go down the Sag Canal?

A. No, we wouldn't go through the same channel to meet this reduction.

Q. You never heard me say you couldn't put it down to an eighth of a cent, if you wanted to?

A. Well, I——

Q. There isn't any prohibition at all?

A. I am talking about reductions and at the same time not lower than the level on which we can make money.

Q. If you handle this corn with the barges that the Federal Barge Line now operates, you can't follow the same route that is being followed today by these private carriers?

A. The present equipment of ours cannot go through the Sag Canal.

By Mr. Brown:

Q. None of it?

A. Not with our tow-boats. I doubt seriously if they could go through.

By Mr. Enoch:

Q. You haven't handled any corn from Illinois points in either 1938 or 1939 to Chicago, have you?

A. 1938 or 1939?

Q. Yes.

A. Well, if you consider East St. Louis an Illinois point, we have, yes.

[fol. 1941] Q. Pardon me?

A. Illinois—rather, East St. Louis, Illinois, as an Illinois point. No, that was wheat. If it is not shown on this exhibit, we handled none; no bulk grain.

Q. Are you sure about this figure here, Morris to Chicago in 1936, almost 24,000 tons?

A. Yes, sir.

Q. Over 800,000 bushels?

A. Yes, sir.

Q. Now, taking 63, Exhibits 63 and 64, together, did it cost the man who paid those transportation charges in 1936 12¼ cents to get that from Morris into his elevator in Chicago?

A. I wouldn't say you could apply that charge to the tonnages that are shown on Exhibit 63, because I don't know what the method was that was used in transferring it from rail equipment or truck equipment into our equipment. So to that extent, I would say you couldn't match the charges here against these tonnages. If we performed the services at origin points and it went through the elevator at Chicago, then these rates plus the handling charges here would be borne by the shipper.

Q. Would you say that it costs the shipper 12¼ cents or some figure near that?

A. If we performed the service, yes, that is what it did cost him.

Q. Suppose you didn't perform the handling?

[fol. 1942] A. I don't know what he paid to transfer his grain from cars at Kansas City through an elevator into our barge. I don't know whether that is a standard charge or not, but I imagine it would be about a cent and a half.

Q. Your charges wouldn't be so far out of line, would they, that the total cost to the shipper would be somewhat near 12¼, wouldn't it?

A. Oh, yes.

Mr. Enoch: That is all I have.

Exam. Taylor: Anybody have a question?

Mr. Cole: I have one *one* more, if I may.

Exam. Taylor: Mr. Cole.

By Mr. Cole:

Q. Mr. Oliphant, on this grain, this package grain that does move up via Federal Barge Lines or at least is covered by this tariff provision, item 3632——

A. 62, isn't it?

Q. 3662, isn't it?

A. C. I think that is the item. Yes. No, it is 3632; I am sorry.

Q. Yes. When that gets to Chicago and they come to the question of applying the proportional rates east of Chicago to C. F. A. territory, which level do they apply, the ex-TM level or the ex-Northwest level?

A. I have no idea.

Q. You don't know anything about that?

[fol. 1943] A. No, I don't know how the shipper makes his shipments out or what rates. He may surrender the billing, I don't know what rates he gets out of it.

Mr. Enoch: Mr. Examiner, may I ask a question?

By Mr. Enoch:

Q. Did you say that the Federal Barge Line asked for joint one-factor rates in this 26712?

A. 712.

Q. 712?

A. Yes, sir.

Q. The Federal Barge Line asked for that?

A. That is right.

Q. Wasn't that a complaint filed by the Farmers National?

A. No, that is a general barge line case resulting from a complaint filed by the railroads and the barge lines, which was upon the Commission's own motion; embodied in this 26712 investigation, resulting in a general investigation. It started back in 1935.

By Mr. Belnap:

Q. That involves, does it not, a reopening and a rehearing in the case involving the Federal Barge Lines joint rates, which is reported in 77 ICC 317?

A. I will accept your citation as correct. I think that is.

Q. That is an original case seeking joint rates?

A. That is right.

Q. And in 26712, do you know what the basis was for the proposals of single factor through rates on grain, just the [fol. 1944] general basis?

A. The general basis was, for example, into the Southeast, the total of the proportional rail rate east of the gateway and our local port-to-port factor plussed by the handling charges necessary to transfer from the equipment at origin into our equipment.

By Mr. Enoch:

Q. At origin?

A. Yes.

Q. Or at the interchange point?

A. Both. You had a transfer from rail equipment or to our equipment at origin, into ours. Then you had another transfer at the port of interchange with the rail carrier.

By Mr. Belnap:

Q. However, it was predicated on the use of the proportional rail rate east of the gateway, plussed by our local port-to-port factor and handling charges?

A. Oh, yes.

Q. Did that proposal relate to rates to Chicago?

A. On the grain rates, no. We asked for rates into the Southeast, one-factor through rates, because those were the carriers with which we tried to get the through rates put in voluntarily.

Q. Yes. As far as Chicago, is concerned the barge line has continued to have the traffic handled on combination of separately established factors?

A. We continued to do that in any instance where the rail carriers follow a similar practice. Where they don't [fol. 1945] do that or where they are unwilling to do that and want to force us into the joint rates, then we will use that proportional rate and if they want to quote it as a one-factor through rate, all right, but we say that that through factor should contain as a part of it the proportional rate east of the gateway.

Q. Take either from the Missouri River or from Illinois, are you willing to join the carriers east of Chicago in that basis of rates?

Mr. Enoch: I object to that. What is the use of saying that? There have been months and months and years and

years for the Federal Barge Line to file a petition with the Commission asking for that.

Mr. Belnap: What is wrong with the present adjustment, Mr. Enoch?

Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Enoch: I suggest that Mr. Oliphant is not ready to commit the Federal Barge Lines, unless you have discussed it with him.

Mr. Belnap: I have not discussed it before, but I do know the policy of the traffic department which he represents.

The Witness: I can say this much, as far as our line is concerned, I assume they would follow the same procedure with the rates east of Chicago or through Chicago and Peoria, the same position they took in the Southwest, and [fol. 1946] in that instance they were willing to establish through one-factor rates.

By Mr. Enoch:

Q. Why do you publish proportional port-to-port rates?

A. For the same reason that the rail carriers move their business on proportional rates.

Q. Instead of doing that, why didn't you ask for joint one-factor rates?

A. Why should be publish any different basis, unless compelled to do so, when the rail lines follow that procedure? If they have a rate break situation, why shouldn't we have it.

Mr. Belnap: Are you talking, Mr. Enoch, about the case in which the Federal Barge Lines published its grain rates on the Mississippi as proportionals, from and to the ports?

Mr. Enoch: That is right.

Mr. Belnap: You appreciate at that time, docket 26712 was pending.

Mr. Enoch: That did not apply through Chicago.

Mr. Belnap: Neither did the rates we were trying to file with the Commission apply through Chicago.

Mr. Enoch: There isn't anything to prevent your asking the Commission to apply joint one-factor rates through Chicago on this grain.

Mr. Belnap: I think we would — apt to take it without asking the Commission for it. Presently, we have a com-

bination of port-to-port rates up to Chicago, plus reship-
[fol. 1947] ping rates beyond, the same as the rail rate structures are made.

Exam. Taylor: A good deal of this is argument.

Mr. Belnap: I just want the position of the Federal Barge Lines to be clear and not to be misunderstood here.

Exam. Taylor: Any other questions? Mr. Brown?

By Mr. Brown:

Q. Do you, at any time, know what happens to the grain that you have brought into Chicago for delivery to these elevators or mills?

A. No, I don't know what happens to the grain after it arrives at Chicago, but from testimony I have heard in this case, it is not consumed in Chicago. But I don't know what happens to it.

Q. Well, if most of the grain that comes to Chicago on the Illinois River goes out by lake, there wouldn't be any necessity for an arrangement between the barge line, your barge line and the Eastern railroads, would there?

A. Yes. Why should I be deprived of the advantage of both methods of transportation out of the gateway; not we, but why should the shipper be deprived of it? The principle is wrong, in other words. If you restrict this proportional rate so as not to apply on river grain, permit it to apply on lake.

Q. You didn't get my question.

A. Yes, I did.

Q. If the most of the inbound grain by barge goes out from Chicago by lake, is there any necessity for making a common arrangement between the barge line and the Eastern railroads?

[fol. 1948] A. It wouldn't be, because then the traffic would go out ex-lake, if these restrictions are permitted to become effective.

Q. Would you say there has been a rather gradual increase in the Federal Barge Line business in bulk grain during the last two or three years?

A. To this territory?

Q. Over your system.

A. Well, we have had a pretty good export market and our grain movement to New Orleans increased considerably.

Q. Didn't the barge line in 1938 handle over 22,000,000 bushels of corn?

A. Yes. that would be the result of the export market.

Q. And isn't it a fact that you haven't handled any corn from Kansas City to any point north of St. Louis? Do you keep pretty close touch with what is going on?

A. We have handled some corn from Kansas City to St. Louis in 1939.

Q. I said north of St. Louis.

A. No, we haven't.

Q. Do you watch your tonnage reports week to week and month to month?

A. Well, in a general way, I would say yes.

Q. Well, were you attracted, was your attention attracted to this heavy movement of over 40,000 tons of wheat from Kansas City to Chicago last year?

[fol. 1949] A. Yes.

Q. Do you know what happened to that wheat when it got here?

A. No, sir, I don't.

Q. Do you know for whose account it was?

A. No, I don't.

Q. Well, don't you know that that was for the mills at Buffalo, that all moved by lake from Chicago?

A. No, sir, I don't.

Q. If you will locate that, you will find that that was wheat that formerly moved from Kansas City by rail and went down the lake from Milwaukee. Your barge line has been getting it by water to Chicago and then goes on the lake from Chicago. Look into that and see if I am not right. Apparently, the rates of your company and the people like the Mechling are pretty far apart. Does that indicate that you have never gotten together to discuss what would be proper rates for either one of you?

A. We wouldn't discuss with the Mechling line as to what rate would be proper to apply for account of both of our lines. As I stated, we have a basis for making grain rates which we apply all over the system. We think it is a good basis and one which will result in our ability to make money. We can go lower and still make money, but rather than break up the general rate structure simply to cope with a carrier on some individual stream, we let the business go by the board.

Q. Well, it would be just all right to say, where you are [fol. 1950] in a position where you can say, "Take our basis or not, take it or leave it." In other words, you will not deviate from what you understand to be your proper basis?

A. We will not depart from the basis which we think is proper for use all over the system.

Q. Is that because you think if you lower the rate between two ports, you might have to do it between all ports?

A. Well, it may result in a request for lower rates some other place and then it would put the Federal Barge Lines, a Government agency, in the position of competing for traffic that a privately owned carrier is handling, and we don't take that position. It is our business to get the privately owned carrier in the business and let him operate. If he can make money out of his rates, fine, let him go ahead.

Q. Eventually, they might wipe you out?

A. That is the original intention, I think, of the establishment of the barge line, of the Federal Barge Line, to permit private carriers to come in and take that traffic away from us.

Q. And that process has begun at Chicago on the upper end of the River?

A. It hasn't begun there. We meet with competition in other states. The Warrior Division, for example, we lost sugar movements on the Warrior Division to a private carrier, and we didn't cut the sugar rates to meet this competition.

Q. But as far as the grain business is concerned, the proc- [fol. 1951] ess of letting in the private and eliminating the Federal Barge Line has begun only at Chicago?

A. No, you have heard tell of the John I. Hay operating from New Orleans with grain and taking sugar out of New Orleans. We haven't tried to meet the John I. Hay competition.

Q. If his barges were held up a long time to get through the elevator, he will soon get sick of that business, won't he?

A. I imagine so, if he needs his equipment.

Exam. Taylor: Is that all you have, Mr. Brown?

Mr. Brown: Yes, that is all.

By Exam. Taylor:

Q. Mr. Oliphant, I am interested in this 40,312 tons of wheat that moved from Kansas City to Chicago in 1939.

A. Shown on Exhibit 63?

Q. Yes, and I would like to know if the rates shown in Exhibit 4 of——

A. 64.

Q. Of 12.8 with a minimum of 350 tons, the 8.8 rate with a minimum of 1,000 tons, what is the rate or were the rates that were collected on that traffic?

By Mr. Belnap:

Q. Do you have that information here, Mr. Oliphant?

A. No, I don't but——

Q. Can we supply it for the record?

A. I don't know whether we could do that, Mr. Belnap, [fol. 1952] without making an extended check of our freight bills, to learn how those shipments moved; if it moved in one quantity or in several different movements.

By Exam. Taylor:

Q. Let me ask you this: If a barge line were to move over there—how big is the barge, the largest barge you have?

A. 22 to 25,000 tons.

Q. If a full barge load was to move over there, would these be the rates you would apply on that?

A. As to the line rates, I can say definitely that the rates under Column C, generally speaking, of the 8.8 cent rate would be applied to a quantity movement over a thousand pounds or better. Now, the handling charges, not knowing how the particular traffic that you refer to was handled at origin, whether it came through an elevator or whether we transferred it, I couldn't say with any definite accuracy whether the additional handling charges shown on that exhibit would apply. But to the tonnage shown on Exhibit 63, the rates would be applied.

Q. It was applied?

A. Yes, if you happen to have a movement in that forty thousand some odd tons of 350 tons, then your higher rate would be applied.

Q. I notice in some instances you have a 1,500 ton minimum but you don't have it in connection with the rates from Kansas City to Chicago.

[fol. 1953] A. That is right.

Q. I was wondering——

A. That is because of channel conditions on the Missouri River. The 1,500 ton minimum is too much depth for the channel and we couldn't get through with it.

Q. I see. Now, when you delivered that traffic at Chicago, did you issue expense bills, freight bills for that?

A. Yes, we make the same kind of expense bills that the rail lines use when they deliver freight. In other words, our system of billing, bills of lading, way bills and freight bills are almost identical with the rail lines.

Q. And do you show the rate in that?

A. Yes, and the method of accounting is, I would say, altogether the same as the rail carriers. We follow the standard of accounting, way bills and collecting our freight charges, even to the extent of the credit allowance.

By Mr. Enoch:

Q. You don't make the same kind of annual reports, do you?

A. Well, I don't know whether they d› or not. That is an accounting feature. They make our accounting reports under the rules of the Interstate Commerce Commission on joint traffic.

By Exam. Taylor:

Q. Do I get it straight, that in connection with package grain, that you have joint through rates with the rail carriers through Chicago?

A. They are not joint one-factor rates. They are made up of a combination of the filed rate from Kansas City to [fol. 1954] Chicago, water filed rate plus the proportional rail rate from Chicago to the East.

Exam. Taylor: Anything further from this witness?

By Mr. Enoch:

Q. Mr. Oliphant, did you say in connection with Exhibit 63 that those rates under which those bulk grain movements were transported were unfiled rates?

A. The tonnage that is shown on Exhibit 63 moved on unfiled rates.

Q. Filed neither with the Illinois Commission——

A. Wait a minute, when you refer to unfiled rates, I interpret that you mean filed with the Interstate Commerce Commission.

Q. What do you mean, that is what I want to know?

A. Well, if you want to know whether this traffic moved on filed rates and by "filed rates" you mean any regulatory body, I would say yes, you will find some traffic moving on rates filed with the Illinois Commerce Commission, traffic from East St. Louis, Illinois, for example, to Chicago. That rate is filed with the Illinois Commerce Commission and it is published in Exhibit 66.

Q. All these intrastate movements shown on Exhibit 63 are covered by rates on file with the Illinois Commerce Commission, is that right?

A. All Illinois intrastate rates are on file with the Illinois Commerce Commission and are published in that Exhibit 66.

Q. The interstate movements are under rates that are [fols. 1955-1957] not on file wit the Interstate Commerce Commission?

A. With any regulatory body.

Mr. Belnap: Mr. Examiner, I offer Mr. Oliphant's Exhibits in evidence.

Exam. Taylor: Exhibits 63 to 66 will be received.

(Exhibits 63 to 66, both inclusive, Witness Oliphant, received in evidence.)

Exam. Taylor: Is that all from this witness? (No response.) Witness excused and we will adjourn until nine o'clock tomorrow morning.

(Witness excused.)

(At 5:25 o'clock P. M., Monday, January 22, 1940, adjournment taken to 9:00 o'clock A. M., Tuesday, January 23, 1940.)

[fol. 1958]

Morrison Hotel,
Chicago, Illinois,
Tuesday, January 23, 1940.

Met pursuant to adjournment at 9:30 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances:

As heretofore noted.

Proceedings

Exam. Taylor: Gentlemen, are you ready to proceed? Off the record.

(Discussion outside of the record.)

Exam. Taylor: All right, now, come to order; the next witness, please.

Mr. Belnap: Mr. Schimmel, will you please take the stand. May we distribute Mr. Schimmel's exhibits?

Exam. Taylor: Yes, off the record.

(Protestants' exhibits 67 to 78 marked for identification.)

Exam. Taylor: Proceed.

J. J. Schimmel was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Will you state your name?

A. J. J. Schimmel.

[fol. 1959] Q. By whom are you employed?

A. By the Continental Grain Company, Chicago.

Q. In what capacity?

A. Traffic manager.

Q. The Continental Grain Company is one of the protestants?

A. Yes, sir.

Q. And have you been designated by the protestants who joined with the Continental Grain Company as one to present the traffic evidence on behalf of that group?

A. I have.

Q. What has been your traffic experience, Mr. Schimmel?

A. I have been employed with Continental Grain since March, 1938. The preceding four years, as traffic manager, Farmers' National Grain Corporation, Chicago; four years preceding that time, from 1930 to 1934, traffic manager Grain Stabilization Corporation; and 1924 to 1930, traffic manager, Kansas Wheat Growers Association, Kansas City.

Q. Are you familiar with the issues in this case?

A. I am.

Q. And have you made a study of the rates on grain which are involved in this case, for the purpose of presenting oral testimony, supplemented by a series of exhibits?

A. I have.

Q. Were those exhibits prepared under your supervision and direction, and do you believe them to be true and correct?

[fol. 1960] A. I do.

Q. Please proceed in your own way, Mr. Schimmel, to describe your exhibits and give such testimony in connection therewith as may seem necessary?

A. Exhibit 67 is a statement of the all-water and all-rail rates on corn from Illinois River landings and from St. Louis and Kansas City, Missouri, to Chicago, Illinois, the distances via water and via rail both being shown. The heading of this exhibit states that the rates shown thereon are applicable to grain. This is true insofar as the rates shown under the heading "Rail Illinois Proportional" are concerned, and as to the rates shown under the heading "Federal Barge." However, the "Rail Intrastate" rates shown on this exhibit are confined to corn. The rates shown on the exhibit for "Independent Barge" are shown in two items and brought to a total, both items requiring explanation. The second item opposite each origin is a trimming charge which is explained in the footnote on the first page of the exhibit, indicated by an asterisk. That charge covers services rendered at the time the barge is unloaded into elevators at Chicago, and is named in dollars and cents per thousand bushels. On this exhibit I have reduced the rate to cents per hundred pounds on the basis of the charge of $3.50 per thousand bushels, which is applicable on barges of more than twenty thousand bushels, and have used the weight per bushel of corn of fifty-six [fol. 1961] pounds. In the case of wheat or soy beans, this

charge would be slightly lower, since these two grains weigh sixty pounds per bushel. The first item opposite each origin under the "Independent Barge" column applies to the line-haul transportation from inbarge at point of loading to inbarge at point of unloading. In the case of Morris, Seneca, and LaSalle, Illinois, the rates heretofore assessed have been named in cents per bushel, the rates being 1.75 cents from Morris and Seneca, and 1.5 cents from LaSalle. These rates per bushel apply to wheat, corn, and soy beans. For the purpose of this exhibit, I have reduced them to cents per hundred pounds on the basis of the corn weight. In the case of wheat or soy beans, the computation would show a somewhat lower charge per hundred pounds, the exact figure being shown at the end of Note B on page 2 of the exhibit. There is a typographical error in the next to the last line of that note. The difference between the rate per hundred pounds on corn, on the one hand, and against wheat or soy beans on the other, should be shown as .21 cents instead of .335 cents.

Mr. Enoch: If the Examiner please, I want to interpose an objection here to exhibit 67, and all other exhibits that are subject to the same criticism; namely, that there appears here in the form of a note, such statements as this: "The Independent Barge Lines who maintain a regular service and rates are as follows:—" and then goes ahead [fol. 1962] and names them. Now, that is not the place for that kind of statement, where the question is as important as it is in this case; and I think things of that kind and character should be stricken from the exhibit.

Mr. Belnap: That note, Mr. Examiner, was not put on there for the nefarious purpose that Mr. Enoch anticipates; and insofar as it recites a fact, I will agree that it should be stricken from the exhibit, and we will deal with it in the witness' oral testimony. The note is there to explain what is meant by independent barge, since the heading is not self-explanatory. The heading Mr. Enoch complains about, may we consider that phrase as stricken from the exhibit?

Exam. Taylor: Just how much of it, all of Note B?

Mr. Belnap: No; it should identify the name of the carriers in order to explain the heading "Independent Barge" on the exhibit.

Mr. Cole: Would it be possible to take the words on the first line, "Who maintain a regular service and rates," and have it read, "The independent barge lines are as follows:——"

Mr. Belnap: That suits me.

Mr. Enoch: Is that independent, as distinguishing it from the Federal Barge?

Mr. Belnap: That is right.

Exam. Taylor: It will be understood, then, that note B of exhibit 7, the first line, we will eliminate the words, [fol. 1963] "Who maintain a regular service and rates?"

Mr. Belnap: Satisfactory.

Exam. Taylor: Proceed.

The Witness: (Continuing) From all other origins shown on the exhibit the rates indicated under the heading "Independent Barge" are named in cents per hundred pounds and apply alike to corn, wheat, oats, and soy beans. In setting down these independent barge rates, I have used the charges paid by Continental as to grain from origins from which the Continental received grain during 1939. These origins include Morris, Seneca, LaSalle, Lacon, Peoria, and Havana. In the case of Morris and Seneca, the grain received by Continental was purchased by it from the Cooperative Allied Grain Dealers' Association and Lowell-Hoit delivered Chicago. The grain moved to Chicago in barges of the Allied Barge Corporation which were towed by the A. L. Mechling Barge Line. For the account of the Cooperative Allied Grain Dealers Association or Lowell-Hoit, we paid to the Allied Barge Corporation transportation charges to Chicago at the rate of 1.75 per bushel, which figures 3.125 cents per hundred pounds of corn.

Exam. Taylor: Is that based on 56 pounds?

The Witness: On 56 pounds.

By Exam. Taylor:

Q. Per bushel?

A. Yes, sir. However, the A. L. Mechling Barge Line maintained from Morris and Seneca this last year on grain [fol. 1964] handled in its own barges a rate of 2.75 cents per hundred pounds. The grain received by Continental from LaSalle was transported by the John I. Hay Company at a rate of 1.5 cents per bushel, which is the equiv-

alent of 2.675 cents per hundred pounds on corn. From that same station the A. L. Mechling Barge Line maintained a rate to Chicago of 2.75 cents per hundred pounds, and we have had grain transported on that rate since this exhibit was prepared.

Mr. Enoch: I don't want to be interrupting here any more than——

Mr. Belnap: Go right ahead.

Mr. Enoch: The Examiner will note in this statement, I suppose, there are similar expressions involved. It is stated repeatedly that such-and-such a company maintains and have a rate. Now, the evidence here is that they neither maintain, nor do they have a rate in the sense that they cannot maintain and do not have a rate if they do not publish it somewhere. I do not want to object to that, as that statement and similar expressions will be used, I have no doubt, in the testimony to follow. May it be understood now that if it is used and intended to use the expression "Maintain a rate," in a technical sense, I object.

Mr. Belnap: Mr. Examiner, it is a rate in a technical sense, unless Mr. Enoch believes only a rate in a tariff on file with the Interstate Commerce Commission can be a rate.

[fol. 1965] Mr. Enoch: I didn't say anything about being on file with the Interstate Commerce Commission; but it ought to be written or published somewhere; otherwise, it ought to be a contract charge.

The Witness: Anyone in the grain business can get that rate; it is public information.

Mr. Enoch: I move that statement be stricken out.

Mr. Belnap: I like that statement.

Mr. Enoch: I think you would.

Exam. Taylor: Where would he find the publication of that charge?

The Witness: It would not be published, Mr. Examiner; but if anyone in the grain business desired to know what the rate from Morris, Seneca, or LaSalle is, Mechling would gladly furnish it.

By Exam. Taylor:

Q. How would he furnish it, merely call him up and he would give you the rate?

A. He might do that, or write him a letter.
Q. It might be the same today and different tomorrow?
A. He has not done that in the past.

Mr. Enoch: Mr. Schimmel made a statement that anybody could get that rate; I don't think that ought to be allowed in the record. I made a motion to strike it out; I don't think it ought to remain there, because in view of the previous testimony there isn't any obligation on the part [fol. 1966] of Mr. Mechling to give that rate to anybody, and he does not have to.

Mr. Belnap: Mr. Examiner, that perhaps is undoubtedly true, and that there is no statutory requirement that a common carrier not subject to the jurisdiction of the Interstate Commerce Commission must keep a rate in force for any particular length of time. But here the fact is that we had it from Mr. Mechling, and we are now having it from Mr. Schimmel that certain charges were known, and it was a matter of public knowledge, and that the same figure had been constantly in effect. As I understand it, Mr. Schimmel uses the word "maintained" in that sense.

The Witness: That is right.

Mr. Enoch: What sense?

Mr. Belnap: That the rate was commonly known in the trade, and remained at the same figure throughout the season.

Mr. Enoch: The testimony by Mr. Mechling himself is that he is a private carrier.

Mr. Belnap: Mr. Enoch, it is a matter of legal conclusions, and the facts show——

Mr. Enoch: The documents that he issued to the public show he is in the business of a private carrier.

Mr. Belnap: What a man says he is does not control; it is what he does.

Mr. Enoch: When Mr. Schimmel says anybody can go [fol. 1967] and get that rate, I am sure he does not mean that; because if I went over tomorrow, or you went over tomorrow and asked Mr. Mechling to transport that freight, and he refused to do it, we could not force him, or sue him for damages.

Mr. Belnap: That depends on whether he is a common carrier by water.

Exam. Taylor: The exhibits will be received, subject to Mr. Enoch's objections.

Mr. Enoch: Exception.

Exam. Taylor: Exception noted on the record.

Mr. Enoch: Mr. Belnap, are you going to attempt, as we go along here and we are discussing some other subject at the same time,—attempt to characterize the service that is performed by one or more of these barge lines?

Mr. Belnap: Neither by Mr. Mechling, who is called as a witness, nor this witness, will I attempt to draw legal conclusions. I shall attempt to have them state the facts, and then have the Commission draw legal conclusions.

Mr. Enoch: Is Mr. Schimmel on here for the purpose of telling the so-called facts?

Mr. Belnap: What has been done, and only that.

Mr. Enoch: Can we do that at one time, instead of making a little touch here and there, and then skip it for a while and taking it up later?

Mr. Belnap: Mr. Schimmel has prepared a statement [fol. 1968] which is in description of his exhibits, and I think he would probably be discommoded if he were not allowed to go ahead in the order he has prepared his material.

Exam. Taylor: Proceed.

The Witness: (Continuing) From the Illinois stations shown on this exhibit, other than those from which Continental received grain, the line-haul rates shown are those which were assessed on grain of other shippers who are protestants. The Federal Barge Lines' rates, as in the case of the independent barge rates, apply from inbarge at point of loading to inbarge to port of unloading, and the additional item shown for trimming charge was computed on the same basis as I have already described. The Federal Barge Lines' rate shown from Illinois River landings, as well as from St. Louis, applies in connection with a minimum weight of fifteen hundred tons. When the minimum weight is one thousand tons, the rate is one cent higher. None of the barge rates shown in this exhibit are published in tariffs on file with the Commission. The rates shown are however, a matter of common knowledge throughout the grain trade and, in case of the Federal Barge Lines, are published in a printed document.

Mr. Enoch: What is common knowledge throughout the grain trade, the Federal Barge or the other?

The Witness: Both of them are common knowledge.

Mr. Enoch: I want to move to strike that out, about this [fol. 1969] common knowledge.

Mr. Belnap: That is a question of fact, Mr. Examiner. The witness testified to the fact.

Exam. Taylor: Objection overruled.

The Witness: Anyone can secure these rates, Mr. Enoch. You can go to Mechling, or you can go to the Federal Barge Line. They even have their tariff in printed form, containing the rate. There is no secret about this.

Mr. Enoch: I move the statement be stricken.

Exam. Taylor: Overruled.

Mr. Enoch: Exception.

Exam. Taylor: Exception noted on the record.

The Witness (Continuing): It will be noted that from the origins shown in Illinois the distances to Chicago via water are approximately the same as the distances via rail. The time in transit to South Chicago elevators via barge service from Morris, Seneca, Ottawa, and LaSalle to Chicago is less than via rail. From the landings further south the time via river approaches finally exceeds the time via rail, the difference in favor of the rail becoming increasingly greater as the water distances increase.

By Mr. Belnap:

Q. Mr. Schimmel, on this exhibit you show certain rail rates under the heading Illinois Proportional; is it not true that those rates as published in the tariffs of the Western lines serving those points, are actually published as [fol. 1970] local rates to Chicago?

A. Yes, sir.

Q. They are local interstate rates?

A. Yes, sir.

Q. And there is nothing in a tariff which ties those rates up with any rates beyond,—no tariffs of the western lines?

A. No, none whatever.

By Exam. Taylor:

Q. In the last column, the rail mileage is that the short-line mileage, or tariff mileage, or what?

A. Those mileages, Mr. Examiner, were taken from the railroad tariff. If it is a Rock Island point, it is taken from the tariff of the Rock Island.

Q. Then it is not necessarily the short-line?
A. No, it is not.

Mr. Enoch: In connection with this last inquiry of Mr. Belnap's, is there a local rate different—take Morris to Chicago—a local rate different from this rate you identify as Illinois proportional?

The Witness: The Illinois proportional and the—there are two lines there, of rates, the rail intrastate rate with no transit, and the Illinois proportional 9½ cents, which is the same as the local rate to apply to interstate destinations.

Mr. Enoch: Just the two rates from Morris to Chicago?

The Witness: Yes.

[fol. 1971] By Mr. Belnap:

Q. You just mentioned that rail rate shown under the heading of "Rail intrastate"; I understand that rate is one that has been referred to in this record as the lake local?
A. Lake local rate, yes.
Q. And is the prohibition against using that rate on the transit of shipments contained in the tariff of the Western line publishing the rate?
A. There is; there is a specific provision that states that it will not apply with transit privileges.
Q. But that is published by the Western Line, which originates the traffic, is it not?
A. Yes, sir.
Q. So far as the tariffs of the Eastern Lines are concerned, there is no publication about that particular rate, the lake local?
A. None whatever.

Mr. Enoch: Did you say that was on file with the Interstate Commerce Commission or the Illinois Commission, the lake local?

The Witness: The Illinois Commission. It didn't say it, Mr. Enoch, but it is on file with the Illinois Commission.

Mr. Enoch: It is not on file with the Interstate Commerce Commission?

The Witness: No, I would say that it was not; that is [fol. 1972] my opinion.

By Mr. Belnap:

Q. Isn't it in the tariff filed with the Interstate Commerce Commission?

A. Yes, sir.

Q. It is on file, then?

A. Well, then, it would be; it is published on intrastate traffic.

Q. It is restricted by its terms to be applicable on intrastate traffic, and not subject to transit privileges?

A. Yes, that is right.

Q. And now take up your exhibit 68, please.

A. Exhibit 68, consisting of 17 pages, is a statement showing the separately published rate factors applicable on grain traffic from beyond, from Chicago, Peoria, and St. Louis to representative destinations in Central Freight Association, New England, Trunk Line, and Virginia cities territories, and the present and proposed tariff provisions governing the application of such separately established rates. The application of each of these separately established factors is shown in the tariff notes contained on the exhibit, as indicated in the headings over the rates from each of the origins. In the headings over the rate columns, these tariffs are referred to by the numbers used by the publishing agent, while on pages 4 to 17, inclusive, where the notes are reproduced, they are referred to by ICC numbers. To connect the two portions of the exhibit, I [fol. 1973] should state that the tariff referred to as 535-A is issued by Agent B. T. Jones, and is his ICC 3300. The tariff referred to as 245-F is issued by Agent B. T. Jones, and is his ICC 3055, while the tariff indicated as 245-G is issued by Agent B. T. Jones and is his ICC 3356. I shall deal particularly with the factors from Chicago, since that is the most important reshipping point involved in this case. To destinations in Central Freight Association territory, there are in effect from Chicago, in addition to the local rates, three different proportional or reshipping rates. The proportionals indicated as "Trans-Mississippi" and as "Northwest" resulted from the decision of the Commission in Southwestern Miller's League versus A. T. & S. F. Ry. Co., 227 ICC 795, in which was involved the through rates via Chicago from the Missouri River, which is in Trans-Mississippi territory, and from Minneapolis and Duluth, which are in Northwest territory. The

exact application of these rates, insofar as grain arriving at Chicago via rail from the interior is concerned, is shown in detail in the notes reproduced in this exhibit. The reshipping rates from Chicago to Central Freight Association territory are applicable on rail grain from Illinois origins. Note 40 in Jones' tariff No. 535-A carries a specific provision making the northwest proportional applicable on both ex-barge and ex-lake grain.

Mr. Enoch: What note is that?

[fol. 1974] The Witness: Note 40; Note 40 is on page 13.

Mr. Day: I object to the statement by the witness that that does provide for the Northwest proportional on ex-barge grain. The tariff is the best evidence of its provisions; and as I understand, Mr. Schimmel has submitted the tariff provisions themselves; and Mr. Tannehill also introduced them. So in view of the controversy here, it seems to me there is no point in it.

Mr. Belnap: Mr. Tannehill testified precisely as Mr. Schimmel has now.

Mr. Cole: I beg to differ.

Mr. Day: You asked Mr. Tannehill questions, and I objected.

Mr. Belnap: And the objection was overruled, and he answered.

Exam. Taylor: The same ruling in this case.

Mr. Day: Exception.

Exam. Taylor: Exception noted.

Mr. Cole: May I be off the record?

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: Proceed.

The Witness (Continuing): It will be noted that this provides on ex-lake grain from Duluth the same proportional beyond Chicago as if the grain had arrived from Duluth [fol. 1975] or Minneapolis via rail. However, when this Northwest proportional is applied on ex-barge grain from Chicago, it results in a rate factor different than would be applicable if the grain moved into Chicago from the same origin via rail. Generally speaking, the Northwest proportional is higher than the reshipping rate applicable on ex-rail grain from Illinois origins, and is uniformly 3 cents higher than the Trans-Mississippi proportional which

is applicable on ex-rail grain from Kansas City. The proportional rates shown to destinations east of Central Freight Association territory presently apply on all grain from beyond Chicago, regardless of territory of origin, providing the grain arrives at Chicago via boat, barge or rail.

Mr. Day: I object to that statement, because that clearly is not in the tariff. There is nothing in the tariff about barge, is there?

Mr. Belnap: He says it is applicable if the grain arrives by barge.

Mr. Day: There is nothing in the tariff that says that.

The Witness: I claim that it does.

Mr. Belnap: I object to any objections, except on legal grounds. If it is simply cross-examination, I object. If the witness states a fact, that is subject to cross-examination.

Mr. Enoch: The witness does not state a fact, however, when he is making such statements as that.

Exam. Taylor: Let us see if he does; what part of this [fol. 1976] Note 40 covers that particular point?

Br. Belnap: He is not talking about Note 40 now.

By Exam. Taylor:

Q. What are you talking about?

A. I said the Northwest proportional rates shown to destinations east of Central Freight Association territory presently applies on all grain from beyond Chicago.

Q. Where do you find that in these notes that you refer to?

A. Well, present Note 40.

By Mr. Belnap:

Q. Are you talking about Note 40?

Mr. Day: You are going back to Central Freight Association?

Mr. Belnap: I thought you were going to Trunk Line.

Mr. Enoch: The Examiner asked him about his statement.

Mr. Belnap: It must be Eastern Trunk Line.

The Witness: That is Note 20.

Exam. Taylor: What page is that on?

The Witness: That is on page 4; it is my opinion that

that provision of Note 20 will apply to inbound grain via rail, barge, or boat on the reshipping rate.

By Exam. Taylor:

Q. What part of that rule—just point it out.

A. Reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish the outbound carrier freight bill or like documentary evidence as to the origin of the [fol. 1977] traffic and rate paid to the reshipping point.

Mr. Enoch: I think that this is more or less of an imposition, I do not say intentionally, on the Commission by the parties. Because when you are talking about the application of these tariffs, and confining ourselves—not placing before us every fact that it is so important should be before us, the provisions of the tariff that have to do with the application of the rates. There is a section of the tariff application of rates, and that section tells when these rates apply; and it only refers to these notes 40 and 20 when it shows special reference is here made to Notes 40 or Note 20. You canot tell anything about the final application of the rate until you have the application provision, as well as this note, in front of you. Obviously, the intention of Mr. Belnap and Mr. Schimmel is that this note either adds to or detracts from or modifies in certain ways the provisions relating to the application. How can you tell that until you have the application provisions in front of you?

Exam. Taylor: He is stating as the position that he is taking with reference to the application of the rates here in issue; and as such, I will receive it, and you can argue all those other points on brief, or you can cross-examine this witness as to any phase of his testimony. Proceed. I would like to ask, on the record, are all your mileages short-line mileages or tariff mileage, or will we have to [fol. 1978] take that up each individual time?

The Witness: The mileages shown to Ceneral Freight Association, Trunk Line, and New England were obtained from the Central Freight Association exhibits, and they represent short-line mileages.

By Exam. Taylor:

Q. Short-line rail mileages?

A. Rail mileages.

By Mr. Belnap:

Q. Those are the class rate mileages, are they not, Mr. Schimmel?

A. Yes, sir.

Exam. Taylor: If you do not make reference to individual cases where there is an exception to that statement, it will be understood throughout all of those exhibits.

By Mr. Belnap:

Q. Is that correct, Mr. Schimmel?

A. Yes, sir.

Exam. Taylor: Proceed.

The Witnes (Continuing): The proportionals to Trunk Line and New England territories and the Northwest proportional to Central Freight Association territory will not be made applicable on all ex-water grain if the proposed tariffs are made effective. Actually, the proposal only goes to the point of making these proportionals inapplicable on grain which arrives at Chicago via barge under port-to-port rates not on file with the Interstate Commerce Commission. The application still continues on ex-lake grain [fol. 1978a] which moves to Chicago on port-to-port rates of lake steamers which are not on file with the Commission and also still continues on ex-barge grain which moves under Federal Barge Line port-to-port rates insofar as the latter are on file with the Commission.

By Mr. Belnap:

Q. What is your exhibit 69?

A. Exhibit 69, consisting of all 11 pages, shows the present barge and rail, the proposed barge and rail, and the present all-rail rates on grain from the Illinois River landings and from Kansas City to representative Central territory and Eastern destinations. On page 11 blanks appear in both Notes A and B.

Mr. Enoch: What do you mean by proposed?

The Witness: Proposed in this hearing.

Mr. Enoch: Who is proposing any rates in this hearing? Don't you mean this, Mr. Schimmel: that if you follow the same practice in the future as you have in the past——

Mr. Belnap: Mr. Enoch, he is trying to correct some notes.

Mr. Enoch: Strike out my statements.

Exam. Taylor: Proceed.

The Witness (Continuing): In Note A the first blank should be filled in with exhibit 67, and the second blank with exhibit 68. In Note B the blanks should be filled in with Exhibit 67. I desire to make some corrections of this exhibit which I ask be made on the face of those distributed. [fol. 1979] On page 7 of the exhibit I desire to make the following corrections: Under the heading "All-Rail" as to the factors indicated as "rail beyond Chicago", which also necessitates some changes in the rates shown as the through all-rail rates. Opposite Cincinnati, Ohio, rail beyond Chicago should read "13" instead of "13.5" and should be indicated as transit balance with 25 cents as the through rate. Opposite Circleville, Ohio, rail beyond Chicago should read as a 13-cent transit balance of an 18-cent transit balance, and the through rate should be shown as 25 cents. Also eliminate the words "6th Class." Opposite Detroit, Michigan, rail beyond Chicago should be shown as a 10-cent transit balance instead of the 15-cent reshipping rate, and the through rate shown as 22 cents. This same correction should be made opposite Toledo, Ohio. In other words, the same as Detroit. On page 9 of the exhibit, opposite Baltimore, Maryland, export under the heading "Proposed Barge-Rail," the bottom figure should be indicated as 1.625 cents "more" rather than "less."

By Exam. Taylor:

Q. That is only in connection with Baltimore export?

A. Baltimore export.

Mr. Belnap: Mr. Examiner, this exhibit 67, and perhaps other exhibits of Mr. Schimmel, will indicate certain charges as present barge-rail or as proposed barge-rail; I think nobody is confused about the facts in this case. There are [fol. 1980] no published rates of any of these barge lines, other than the Federal in connection with a certain tariff item. So that there could be no through movement under rates on file with the Interstate Commerce Commission, which is the ordinary type of rate we apply the word "through" to. In both cases the purpose of this exhibit

is simply to indicate what the aggregate charges would be on a through movement by barge to Chicago and thence rail to destination. That is correct, is it, Mr. Schimmel?

The Witness: That is correct.

Mr. Enoch: The vice of that is that there may be somebody working on this case, as those of us will be who have attended this hearing, and may pay a great deal of attention to the exhibits. I do not think there is much excuse for setting up a situation of this kind just as though you were figuring out what the situation would be if I bring it in by truck and then turn it over to a rail line at Chicago, and set down on an exhibit the through rate making a part of that computation what it cost me. In that I might have my own work, but I would figure what it cost me, then put it down on an exhibit as a through rate.

Mr. Belnap: It does not have to be a private truck; it is the charges which barges assess to Chicago, plus rates which rail lines assess beyond.

Exam. Taylor: I think the record is very clear on the [fol. 1981] subject; and if anybody reading it did not catch it, there must be something wrong with him.

Mr. Cole: I would like to ask Mr. Belnap, in this exhibit 69 and in the other exhibits, wherever there is reference by the witness, or wherever the witness refers to the computation of the present barge-rail rates, it may be understood that that present through charge is computed upon the basis of his understanding of the application of the proportional rates beyond Chicago. Isn't that so, Mr. Belnap?

By Mr. Belnap:

Q. Well, that is correct, isn't it, Mr. Schimmel?

A. That is not only my own opinon, but others.

Q. He asked you only about that; that is correct that far, is it not?

A. Yes, that is right.

Q. It is your opinion?

A. Yes.

Q. And it is also the opinion of the Central Weighing and Inspection Bureau?

A. Yes, sir.

Mr. Enoch: Object to that; the Central Weighing and Inspection Bureau cannot possibly have an opinion on this.

I want to move Mr. Schimmel's answer to your question be stricken.

Mr. Belnap: You will find when the transit tariff was [fol. 1982] put in evidence that it was the duty under the tariff of the Central Weighing and Inspection Bureau to put on the outbound billing,—to define the applicable rate.

Mr. Enoch: You do not find any opinion there to express—you do not find any duty there to express any opinion as to the application of the tariff.

Mr. Belnap: They put the rate on the billing; that is a fact, is it not?

The Witness: They are the agents who rate the billing for the carriers. In other words, they are employed by the carriers.

By Mr. Belnap:

Q. Where you show the present application proportional with ex-barge grain, are you showing the rates which that Central Weighing and Inspection Bureau puts on the billing?

A. Absolutely.

Mr. Cole: If the interpretation as now made concerning the application of the present basis of rates is proved to be erroneous, then the through charges as you have them computed under your designations of present barge-rail rates are all incorrect, are they?

Mr. Belnap: That would obviously follow, Mr. Examiner. If it is not the rate, it is not the rate; that is what it come down to.

Mr. Enoch: Where would the Central Weighing and In- [fol. 1983] spection Bureau get this rate that you say it puts on the billing, if it did not get it from the document which you surrender to the bill to support the application for the outbound rate; where would they get it if they did not go to that document?

The Witness: Surrender of that original document?

Mr. Belnap: He wants to know where they get the outbound rates.

The Witness: Out of the railroad tariffs.

Mr. Enoch: Did you say that the Central Weighing and Inspection Bureau puts this rate on the billing?

The Witness: Yes.

By Mr. Enoch:

Q. What rate are you talking about?

A. Any rate in Central Freight Association or Trunk Line territory; they rate every shipment.

Q. Did you refer to the inbound barge charge when you said rate in that connection?

A. Yes.

Q. Now, where would they get that charge if they did not get it from the document filed in your office, which you filed with the Central Weighing and Inspection Bureau to engage the outbound proportional rate?

A. Not filled out in our office.

Exam. Taylor: I think this is leading quite a bit into cross-examination.

[fol. 1984] By Mr. Belnap:

Q. Will you proceed to describe your exhibit 69, Mr. Schimmel?

A. This exhibit simply brings together the separately established rate factors shown in my two previous exhibits and compares the present and proposed barge and rail rates with the all-rail rates, the differences in favor or against the all-rail rates being shown in each instance. Taking Morris and Seneca as representative, the differences are in favor of the present barge-rail adjustment in Central Freight Association territory in amounts ranging from three-fourths of a cent per hundred pounds at Louisville to 7.25 cents per hundred pounds at Circleville. To destinations east of Central territory, the difference in favor of the barge-rail adjustment is uniformly 5.75 cents per hundred pounds on both domestic and export traffic. Under the proposed barge and rail adjustment the difference in Central Freight Association territory would range from 3.75 cents per hundred pounds in favor of the barge-rail at Detroit to 2.75 cents in favor of the all-rail at Buffalo and Pittsburgh. To Trunk Lines destinations, the proposed barge-rail rates would exceed the all-rail rates uniformly by 2.75 cents per hundred pounds. Taking the other Illinois River origins, these differences vary but they are all shown on the exhibit. From Kansas City to Central territory destinations the present barge-rail adjustment shows differences ranging from 1.625 to 3.125 cents less

[fol. 1985] than the all-rail, the difference to destinations to the east thereof being uniformly 4.625 cents less than all-rail. Under the proposed adjustment the differences will vary from .125 cents less than all-rail to Toledo and Detroit up to 5.875 cents in excess of all-rail to Circleville. From Kansas City to eastern destinations the proposed barge-rail combination will exceed the all-rail through rates uniformly by 3.875 cents. It has been stated that interstate rail rate factors to and from Chicago were made effective for the purpose of equalizing the Chicago market and gateway with other markets and gateways. This, however, is true only to a limited extent. There is an equalization of the Chicago gateway with the Peoria and St. Louis gateways on grain from the Missouri River and beyond, and there is also an equalization of the Chicago gateway with the Peoria gateway on grain from Minneapolis, Duluth, and beyond. That is to say, from the interior the rate to these gateways will vary, but the variation will be offset by differences in the opposite direction on the factors from the gateways. As a result, the through rates as made on combination on the gateways are the same via these markets and gateways where this equalization takes place. However, from Illinois territory, which is the important producing territory involved in this case, no such equalization takes place in respect of rates to either Central Freight Association or Eastern Trunk Line territories, except in a few cases. [fol. 1986] That is to say, the rail rate factors from the Illinois River landings to Chicago, plus the reshipping rates to Central Freight Association territory and the proportional rates to Eastern Territory shown in exhibit 68 are not, generally speaking, equalized by separate inbound factors to any other market or gateway, plus reshipping or proportional rates therefrom. Furthermore, as to grain from Kansas City where there is an all-rail equalization of Chicago with Peoria and St. Louis, the rate factor which the carriers now apply on ex-barge grain to Central Freight Association territory is not the separately established rate from Chicago to destination used in equalizing Chicago with Peoria and St. Louis on an all-rail movement. This is because the ex-barge grain from Kansas City pays the Northwest proportional which is uniformly 3 cents higher than the Trans-Mississippi proportional, the latter being a part of the equalized adjustment.

Exam. Taylor: I do not gather that by your statement. Off the record.

(Discussion outside of the record.)

By Mr. Belnap:

Q. In this statement you just made, are you talking about bulk grain moving in barge-load quantities?

A. Yes, I am talking about bulk corn.

By Exam. Taylor:

Q. And not the package grain referred to by Mr. Oliphant yesterday?

A. That is correct.

[fol. 1987] Mr. Day: I had understood your previous ruling to the effect that anything this man said about the application of tariffs was his view of it.

Exam. Taylor: That is correct.

Mr. Day: And the view of those supporting him, perhaps.

Exam. Taylor: That is correct.

Mr. Day: On that account, I did not think it would be proper for me to break in with any objection; but we do disagree with the witness.

Exam. Taylor: That is correct.

Mr. Belnap: Mr. Day, the witness just testified the carriers now apply certain proportionals.

Mr. Day: All I say that under the tariff the Trans-Mississippi basis applies on such grain.

Mr. Belnap: He testified what the carriers apply.

Mr. Day: I don't know whether this witness knows what the carriers apply. Do they apply it for you?

The Witness: You are talking about bulk rates from Kansas City?

By Mr. Day:

Q. Yes, by barge.

A. I have not had any of that in recent years.

Q. That is what I thought.

A. I did have it, and the Northwest application was applied.

Q. Some years ago?

A. Well, 1936 and 1937 I had barges come in from Kansas City.

[fol. 1988] Q. Who handled them?

A. Farmers National Grain Corporation.

Q. I mean, did the Federal Barge Line handle them?

A. Yes.

Q. And they moved out by rail on Northwest shipping rates?

A. If the shipment was into Central Freight Association it moved on Northwest, and if into Trunk Line and New England it moved on the reshipping rate.

Mr. Belnap: May we continue now, and leave the cross-examination until later?

Mr. Day: I did not break in for cross-examination, but only to make it clear that we were not at all acquiescing to what the witness had stated about the tariff application.

Exam. Taylor: Proceed.

The Witness (Continuing): Furthermore, there are many cases in which the all-rail adjustment the through rates from interior Illinois points to Central Freight Association destinations are less than the combination of the separately established factors to and from Chicago. This is illustrated to some extent by my exhibit 69, whenever, in the last column, I show that the factor beyond Chicago is based on a transit balance, rather than on a reshipping rate.

By Mr. Belnap:

Q. You are referring to the all-rail rates now?

A. All-rail rates.

[fol. 1989] Exam. Taylor: We will take a recess for five minutes.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; ready to proceed? Proceed, Mr. Belnap.

By Mr. Belnap:

Q. I think, Mr. Schimmel, you just called attention to the places on your exhibit 69 where rail beyond Chicago was shown as a transit balance, pointing out that that indicated the through rate was less than the combination of the sepa-

rately-established factors to and from Chicago. Have you some few additional illustrations of that, other than those shown on your exhibits?

A. Yes, I have. There are many additional situations where a similar situation obtains, that is, where the reshipping rate from Chicago is not in fact used in the construction of the through rate.

Q. You are talking about Central Territory destinations, are you not?

A. I am, for example from all Illinois origins shown on my exhibit a through rate is maintained to Battle Creek, Michigan, one of the most important consuming points for corn in Central territory, of 19 cents. The I.P. rate from these same origins to Chicago range from 9.5 cents at Morris and to 12 cents at Havana. Consequently, the through rates made on combination would range from 24.5 cents to 27.5 cents.

Q. What is the reshipping rate from Chicago to Battle Creek?

[fol. 1990] A. 15 cents. (Continuing:) It will be noted that such combinations exceed the going through rate to Battle Creek from these same Illinois origins by from 5.5 cents to 8 cents. Consequently, as to Battle Creek and other destinations enjoying a similar adjustment, the reshipping rate from Chicago, which in the absence of a through rate, would be applicable on ex-rail Illinois grain, is not used, nor has it any relation to the through rate, nor is it used in equalizing Chicago with any other market or gateway. Detroit, Michigan, is another destination which enjoys some through rates less than the combination of separately established factors to and from Chicago. For example, from the river point Lacon, Illinois, the I. P. rate to Chicago is 12 cents, and the reshipping rate from Chicago to Detroit is 15 cents, the combination being 27 cents. However, the through rate from Lacon to Detroit is 5 cents less, or 22 cents. This is similar to the situation shown at Toledo on page 6 of my exhibit 69. As another example, from Havana, Illinois, to Columbus, Ohio, the Chicago combination is made of an I.P. rate of 12 cents to Chicago, plus a reshipping rate of 19 cents, totaling 31 cents. The through rate, however, is 3 cents less, or 28 cents. Here is another example of where the reshipping rate from Chicago is not used in the construction of the through rate, nor does it

result in equalizing the Chicago gateway with any other gateway or market.

Q. What is your exhibit 70, Mr. Schimmel?

[fol. 1991] A. Exhibit 70 is a statement which compares the present ex-lake rates from Lake Erie ports with the local rates from the same ports to eastern seaboard, as well as to destinations in Central Freight Association territory. The ex-lake rates from Buffalo and Erie are published to include elevation of one cent per bushel, which, in the case of corn, is the equivalent of 1.79 cents per hundred pounds. In order to obtain the true difference between the local and proportional rates from the rail service involved, I have deducted the amount included for elevation before setting down the ex-lake rates. The purpose of this exhibit is to show the practice of the Eastern lines in providing rates lower than their local rates on grain which has had a prior haul by water. The application of these ex-lake rates is in no part conditional on the grain having had any haul by rail prior to arriving at the port of reshipment. In fact, all of these rates will apply on Illinois River grain shipped to Chicago via barge and thence to the Lake Erie ports indicated by lake carrier vessel. Nor does the application of these ex-lake rates depend on the prior water transportation rates being on file with the Commission.

Exam. Taylor: Are these ex-lake rates published as proportional rates or as just straight ex-lake rates?

The Witness: As ex-lake rates.

By Mr. Belnap:

Q. What do you mean by that, Mr. Schimmel?

[fol. 1992] A. Well, that they have had a prior haul by water into the Lake Erie port.

Q. The same way that the rates out of Chicago are published based on a prior haul by water; is that correct?

A. That is correct.

Mr. Enoch: I do not understand that; I thought your answer to Examiner Taylor was perfectly clear.

Mr. Belnap: Except I do not understand there is any difference between an ex-lake and a proportional rate, if the traffic is simply conditioned on having had a prior haul by water; that is the basis for the application of the rate.

Maybe the Examiner draws some distinction of which I am ignorant.

Exam. Taylor: You mean that the term ex-lake and the term proportional are synonymous?

Mr. Belnap: I think so.

Mr. Enoch: Is that what the witness meant?

The Witness: Yes, that it originated beyond, and took a proportional or ex-lake rate. We refer to that as proportional or——

Mr. Enoch: How are they referred to in the tariff?

The Witness: They are referred to as ex-lake rates.

By Exam. Taylor:

Q. In the tariff?

A. In the tariff.

Mr. Belnap: Do you have in mind that there is some [fol. 1993] difference from a legal standpoint.

Exam. Taylor: No, I just wanted him to state how they were published in the tariff. We can argue the other point later on, if there is another point.

Mr. Belnap: If there is another point, and either the bench or the parties have it in mind, I would be glad, and it would help me in briefing this record, if you tell me what it is.

Exam. Taylor: Off the record:

(Discussion outside of the record.)

Exam. Taylor: Proceed.

The Witness: In the lower blocks of exhibit No. 70 the rates should be shown as applying from Cleveland, Ohio, and Sandusky, Ohio, and Toledo, Ohio, to Cincinnati, Decatur, Evansville, and so forth, instead of as shown. It will be noted that the difference between the local and the ex-lake rates from Buffalo to seaboard is either 4 or 5 cents, in the case of domestic traffic, and ranges from 12 to 14.5 cents on export traffic. From Chicago to seaboard the proportionals presently applicable on ex-barge grain are lower than the local rates uniformly by 8.5 cents in the case of both export and domestic traffic. It will be noted that the ex-lake export rates shown on this exhibit to Boston are the same as to New York. This rate parity Boston with

New York, was prescribed by the Commission in Maritime [fol. 1994] Asso., Boston Chamber of Commerce versus A. A. R. R. Co., 95 ICC 539, 126 ICC 199, in which the Commission predicated its finding on the fact that the ex-lake rates were in the nature of proportional rates and covered a service which was only a portion of a through water and rail service. In the bottom block of this exhibit, I have included rates from Lake Erie ports to some destinations in Illinois, although, except under unusual crop conditions, such as were experienced in 1934 and 1935, these rates will not move any substantial quantity. However, when there is a movement those rates apply, and it is interesting to note that from Sandusky, Ohio, to Decatur and Peoria, Illinois, and from Cleveland, Ohio, to Peoria, Illinois, the carriers provide a proportional applicable on ex-water grain 6 cents below the local rate, and from Toledo, Ohio, to Decatur and Peoria, Illinois, a proportional applicable on ex-water grain of 3 cents below the local rate. In comparison therewith, Tannehill's exhibit 10 shows to Cleveland from Peoria a local rate higher than the reshipping rate by 2 cents, higher than the Northwest proportional rate by 3.5 cents, and higher than the Trans-Mississippi proportional by 4.5 cents. The same exhibit shows from Chicago to Cleveland that the proportional, which is applicable on ex-barge grain, is only 1.5 cents less than the local rate.

By Mr. Belnap:

Q. What is your exhibit 71, Mr. Schimmel?

A. Exhibit 71 is a statement which takes Morris, Illinois, [fol. 1995] as a representative Illinois River landing and shows to eastern seaboard the present and proposed barge-rail rates, and the all-rail rates as taken from my previous exhibits, as compared with the barge-lake-rail rates via Buffalo and rail-lake-rail rates via Buffalo. In the top half of the exhibit, under "Barge-Lake-Rail" and "Rail-Lake-Rail" headings, the elevation at Buffalo as included in the ex-lake rate is shown separately and deducted from the aggregate through charges. However, the aggregate through charge is the important item on this exhibit, since it provides the comparative transportation cost via the competing routes here under consideration. The lake rate from Chicago to Buffalo shown in this exhibit of 6.25 cents per hundred pounds reflects the average cost of shipping

corn via lake from Chicago to Buffalo during the last half of 1938,——

Q. Cost to whom?

A. Cost to the shipper.

Q. To you?

A. To us. rate then being 3.5 cents per bushel. It should be stated that conditions affecting lake rates were somewhat unusual in that period and normally lake rates from Chicago to Buffalo will vary between 2 and 2.5 cents per bushel, which would figure 3.57 and 4.46 cents per one hundred pounds.

Q. Are there occasions when you have lake rates even less than 2 cents a bushel?

A. Yes; in my experience I have seen rates lower than [fol. 1996] that; in fact, as low as a cent and a half a bushel.

Mr. Day: That is Chicago to Buffalo?

The Witness: Chicago to Buffalo.

By Mr. Belnap:

Q. And over a period of years you would have to take something——

A. That is correct.

Q. And if you did show in this exhibit a lower rate for the lake service Chicago to Buffalo you would correspondingly reduce the aggregate charges shown under the head "Barge-Lake-Rail" and "Rail-Lake-Rail"?

A. That is correct.

Mr. Enoch: I do not understand this reference to some rate in effect Chicago to Buffalo by lake.

The Witness: That has been the prevailing rate during the last half of the 1939 season; that is the rate that we have paid.

By Mr. Enoch:

Q. Have you used any tramp steamer?

A. I wouldn't know whether they call them tramp or not. We engage these steamers through vessel brokers; I think some of them are the Canadian Steamship Lines, and the American Bottom Lines. I have never had the question come up in regard to whether they are tramp or not.

If the proportional rates are made not applicable on ex-barge grain, the only avenue by which grain covered by

barge billing can then move to the east is via the lake. The [fol. 1997] purpose of this exhibit is to show what would be the aggregate cost of transportation to seaboard if Morris grain were so moved in comparison with what grain now pays via the barge-rail route and what it would pay via the other routes indicated on the exhibit. Under the present adjustment, the barge-rail rate from Morris to New York is 29.75 cents, a trifle less than the 30.29 cents per hundred pounds which it would cost via barge to Chicago, lake to Buffalo, and thence rail beyond, and the latter figure in turn is a trifle less than the combination of the lake local to Chicago, lake to Buffalo, and rail beyond of 31.54 cents. However, both of these latter combination rates, that is, the barge-lake-rail and the other the rail-lake-rail are substantially less than the proposed barge-rail rate of 38.25 cents, and are also substantially less than the all-rail rate from Morris to New York of 35.5 cents. These differences in favor of the routes via the lake would be shown as even greater in a period of normal charges for lake transportation. The bottom half of the exhibit deals with the export adjustment, the barge-lake, as well as the rail-lake, factors up to Buffalo being the same as in connection with the domestic movement. East of Buffalo, however, the rail carriers who are respondents in this case, provide lower ex-lake rates on export than on domestic traffic, and a different rate is ordinarily maintained during the period of open navigation in order to compete with the canal than [fol. 1998] during the period of closed navigation. For example, to Baltimore, Maryland, the ex-lake export rate from Buffalo during this past year was 7.95 cents per hundred pounds during the period of open navigation, and this included elevation at Buffalo. This rate now is 11.79 cents per hundred pounds. In I. & S. Docket 4618, recently decided, the Commission fixed 9.5 cents as a minimum rate. During the past season the combined barge lake-rail combination from Morris to Baltimore on export grain was 18.45 cents per hundred pounds. If the carriers published the rates authorized in I. & S. Docket 4618, the combination will become 20 cents per hundred pounds. This is substantially less than the proposed barge-rail rate of 28.25 cents per hundred pounds, and also is substantially less than the all-rail rate on export grain from Morris to Baltimore of 25.5 cents per hundred pounds. Grain always tends to move via the route providing the lowest charges for transporta-

tion, and this exhibit plainly indicates that during the period of open navigation the barge-lake-rail route service furnished such a route. I should again point out that the ex-lake proportionals east of Buffalo used in computing these combination charges are not conditioned on the grain having had prior rail transportation, nor are they conditioned on the water rates up to Buffalo being filed with the Interstate Commerce Commission.

Mr. Enoch: Is that the first time you referred to those ex-lake rates as proportional rates?

[fol. 1999] Mr. Belnap: I think not.

Mr. Enoch: Do you recall having referred to them as proportional rates before?

The Witness: I did awhile ago, in answer to your question when you were asking about——

Mr. Enoch: But you have not, independent of any question referred to those lake rates as proportionals?

The Witness: Not other than my conversation with you a few moments ago.

Mr. Belnap: May we proceed?

Exam. Taylor: Proceed.

The Witness (Continuing): Under the present adjustment the barge-rail routes are fairly competitive with the all-rail routes, and this provides for the rail carriers east of Chicago an opportunity to participate in the transportation of the grain grown nearby to the Illinois River landings. However, if the proposed adjustment were made effective, that opportunity would be entirely lost, due to the much lower charges provided in connection with the barge-lake-rail route than in connection with the barge-rail route.

By Mr. Belnap:

Q. What is your exhibit 72?

A. Exhibit 72 compares from Duluth to Chicago and from Chicago to ports on Lake Erie and to Montreal, Quebec, Canada, the lake rates as they prevailed in the last half of the 1939 season with the local and proportional rates [fol. 2000] applicable for an all-rail movement. The purpose of this exhibit is to show that where water transportation is available we find water rates are very substantially below the corresponding all-rail rates. For example, grain can go via lake from Duluth to Buffalo for 6.75 cents per

hundred pounds as compared with 47.5 cents per hundred pounds for an all-rail movement.

Q. Go ahead.

A. The Great Lakes are used very extensively in the transportation of grain and 73 shows the extent to which this is true, both as to receipts and shipments, for the years 1934 to 1937, inclusive, for the ports of Duluth, Superior, Milwaukee, Chicago, Toledo, Erie, and Buffalo. The receipts and shipments shown on this exhibit are stated in tons and are taken from the United States Army Chief of Engineer's Annual Reports, Part 2, for the years indicated. Most of the figures referred to in this record as to quantities of grain have been stated in bushels, and if it is desired to restate any figures shown on this exhibit in terms of bushels that may be done by using 33 bushels, plus 20 pounds for wheat and soy beans, 35 bushels, plus 40 pounds for corn and rye, 41 bushels, plus 32 pounds for barley, and 62 bushels, plus 16 pounds for oats.

Q. Each of those is per ton?

A. That is per ton quantities, per ton in bushels. I have for some of the lake ports additional figures which indicate the extent to which the waterways are being used in the [fol. 2001] transportation of grain. In 1929, according to the Corn Exchange at Buffalo, New York, the receipts via water in bushels stated in round figures were 103,000,000 wheat; 26,000,000, corn; 11,000,000, oats; 12,000,000, barley; 4,000,000, rye; and 4,000,000 soy beans. All of these receipts were entitled to move outbound on the ex-lake rates shown in my earlier exhibits, regardless of whether any of this grain had prior rail transportation or not, and regardless of whether the rates on which it moved into Buffalo were on file with the Commission or not. At Duluth-Superior, in the period 1935-1939, inclusive, the annual all-rail receipts of all grain in bushels in round figures ranged from a low of 28,000,000 to a high of 120,000,000 and the receipts via water from a low of 178,000 to a high of 6,000,000. For the same years, the shipments via rail ranged from a low of 4,000,000 to a high of 21,000,000 and the shipments via water from a low of 27,000,000 to a high of 105,000,000. It has been suggested that little corn moves out of Duluth via water. The fact is in 1938, 27,000,000 bushels of corn and in 1939, 13,000,000 bushels of corn were shipped out from Duluth via the lake, and all of that corn, upon

arrival at port of destination, became entitled to the use of the proportional rates beyond, lower than the local rates.

Mr. Day: You do not show the 1938-1939 figures in your exhibit?

[fol. 2002] The Witness: No, this is additional information, in addition to that exhibit 73.

By Exam. Taylor:

Q. Where did that corn go, all the corn that you just mentioned; did any of it go to Chicago?

A. Some of it might have come to Chicago.

Q. A very small percentage?

A. A very small percentage, most of it went to Buffalo, and that end of the lakes. I should state that the corn shipments via lake from Duluth in 1938-1939 very substantially exceeded the shipments via lake in the earlier years mentioned, the bushels shipped via lake in 1935 being 1,000,000; in 1936, 2,300,000; and in 1937, 3,500,000. The bulk of the local shipments from Duluth move to ports, other than Chicago, although as tonnage statistics already in this record show, there have been years when substantial volume has come to Chicago.

By Mr. Belnap:

Q. Now, as I understand it, Mr. Schimmel, your exhibit 73 carried the latest year for which the average you there cite was available; is that true?

A. That is correct.

Q. That is the reason you had to supplement by these additional figures?

A. Correct.

By Exam. Taylor:

Q. Where did you get these supplemental figures?

[fol. 2003] A. From our offices in Duluth and Superior and Buffalo.

Q. I mean the source of that information; where did they get it?

A. They got it from the Chamber of Commerce there, or the grain office there, the grain exchange.

Q. It was not the same source as shown on this exhibit?

A. No, sir.

By Mr. Belnap:

Q. Each of these points have an exchange which compiles official records?

A. Yes; and the same, I presume, at Chicago.

Q. What is your exhibit 74?

A. My exhibit 74 deals with the matter of through transportation charges from Duluth and Superior to eastern seaboard, comparing the lake and rail combination made over Lake Erie ports with the through rate via the all-rail route through Chicago. The extent to which the lake and rail combination rate is less than the all-rail rate being indicated in each instance. As the exhibit is prepared, the elevation included within the ex-lake rate has been deducted before computing the difference. This is on the theory that if Duluth grain came to Chicago via rail it would pass through an elevator at an additional cost over and above the rail rates. Taking the first item, the exhibit shows that it costs 11.24 cents per hundred pounds less for transportation over a lake and rail route to Baltimore through Buffalo, elevation being excluded, than over the [fol. 2004] all-rail route through Chicago. Those for whom I appear have not asked that a penalty be put against the ex-lake grain at Buffalo in order to improve Chicago's competitive position. We appreciate that Buffalo is fairly entitled to the benefit which flows to it from having water service from Duluth. It, of course, is possible for Chicago to participate in a lake and rail movement from Duluth by trans-shipping the grain at this port. The resultant charges to eastern seaboard when grain is so handled, as compared with through all-rail rates, is shown on exhibit 75. The next to the last block on the sheet shows that the cost of so handling grain to Baltimore for domestic movement is 39.75 cents, as compared with a net cost, elevation being excluded, of 24.75 cents through Buffalo, as shown on my previous exhibit. This exhibit shows that the combination lake and rail rate from Duluth via Chicago to eastern seaboard is uniformly 6.25 cents per hundred pounds less than the all-rail rate from Duluth via Chicago.

Q. That again is based on lake operations as they prevailed under unusual conditions as they prevailed in the latter part of 1939?

A. That is correct.

Q. And in a normal period for lake charges, that difference would be substantially lower, as you have shown; is that so?

A. Yes. I have heretofore stated that the proportionals presently applicable from Chicago on grain from the Illi- [fol. 2005] nois River landings were not made effective for the purpose of equalizing all-rail rates from such interior origins to eastern destinations with all-rail rates from the same origins via another market or gateway to the same destinations. However, in the case of grain from Duluth brought into Chicago via lake and then reshipped on the proportional rate, as is presently permitted, and as is proposed to be continued in the tariffs under suspension, the proportional beyond Chicago is the separately established rate factor used in equalizing the Chicago gateway with the Peoria gateway on Duluth grain moving all-rail.

Q. What is your exhibit 76, Mr. Schimmel?

A. Exhibit 76 is a statement showing rates on grain from the Indiana origins indicated to Chicago, showing both the local rates and the proportionals applicable on traffic reshipped from Chicago via lake. In this case, the reshipment via water permits the shipper to obtain inbound transportation to Chicago for six cents less than he would have to pay on grain from the same stations consumed locally at Chicago. In connection with these lake proportionals, there is no requirement that the outbound movement via lake be under rates on file with the Commission. There are no arrangements for operating a through route between the carriers who publish these lake proportionals to Chicago and the boat lines which handle the grain from Chicago. The fact I have just stated is likewise true as [fol. 2006] to the lake and rail movement from the head of the lakes via Chicago, via Lake Erie ports, and via Georgia Bay ports to eastern destinations. In all those cases, just as in the case of the present application of the proportional rates on ex-barge traffic, the rail rate application is one contained entirely in the tariffs of the rail lines, and neither the barge lines nor the boat lines on the lake have anything to do with it.

Q. Mr. Schimmel, you have had a number of illustrations of rail proportional less than the corresponding local rates, which are conditioned solely on the fact that the grain has had prior transportation by water on port rates not on file with the Interstate Commerce Commission; are there

any other rates under prior adjustments where it is the common practice to find a rail rate in the nature of a proportional lower than a corresponding local rail rate made applicable on traffic which has had a prior movement on an unfiled water rate?

A. Yes.

Mr. Enoch: Did you refer to proportional rates lower than the local rates in your question?

Mr. Belnap: I said rates in the nature of a proportional, lower than the local rates.

Mr. Enoch: The first part of your question did not say that.

Mr. Belnap: He had given certain illustrations; then [fol. 2007] I asked him certain questions.

Mr. Enoch: You refer, then, to such examples as given by Mr. Schimmel, naming ex-lake rates?

Mr. Belnap: You mean what I referred to before asking the question?

Mr. Enoch: No; may we have that question read, please.

(Question read.)

Mr. Enoch: Now, my question is when you referred to citations, Mr. Schimmel has made, of proportional rates lower than the locals, do you have in mind ex-lake rates, and rates of that character?

Mr. Belnap: I have in mind simply the rates shown in his exhibits; 76 is one of them.

Mr. Enoch: Does that include ex-lake rates?

Mr. Belnap: That includes ex-lake rates, as well as ex-barge and ex-lake rates from Chicago.

Mr. Enoch: All right.

Exam. Taylor: Can you answer the question, Mr. Witness?

The Witness: Yes. The rate adjustment on bituminous coal from eastern fields, known as the lake cargo coal rates, provide an outstanding example of such a rate adjustment. To give a specific example, from the New River district on the C. & O. in West Virginia to Toledo and Sandusky, Ohio, the rail carriers published local rates on bituminous coal, in carloads, of $2.74 per ton. They also provide a rate of [fol. 2008] $2.06 on coal which moves beyond Toledo or Sandusky, Ohio, by lake (C. & O. Tariff No. 100-H, I. C. C. 12453, N. Y. C. Tariff No. 287-B, I. C. C. L. S.-C 296). There

is a tremendous movement of coal on large cargo rates of this character which moves beyond by water to the head of the lakes. As indicating the exact extent to which rates of this character are used on coal going beyond the ports, the tonnage handled in 1938 on the lake cargo adjustment from all producing districts to Sandusky and Toledo, Ohio, was 16,599,168 tons via Toledo and 6,970,913 tons via Sandusky. There are also a number of rates on coal published from mines to Ohio River landings applicable to coal moving beyond by river under barge rates not on file with the Commission which are lower than the corresponding local rates. For example, from the Logan Coal Field in West Virginia, to Huntington, West Virginia, the local rate on bituminous coal, in carloads, is 87 cents per ton, and the proportional rate applicable on coal moving beyond via barge is 55 cents per ton (C. & O. Ry. Co. Tariff I. C. C. 12257 and 12258). Similar rates are maintained from mines in northeast Kentucky to Catlettsburg, Kentucky. In B. & O. Tariff I. C. C. No. 2908 is maintained from Group 1 in West Virginia to Glenwood, Pennsylvania, on the Ohio River, a rate on bituminous coal, in carloads, of $1.25 per ton when the coal moves beyond by barge or boat, while the local rate is $1.40. There are also rates on coal published from ports [fol. 2009] ports on the Ohio River to interior destinations in Indiana and Ohio which are made applicable by the terms of the tariff only on coal which has had a prior movement by river to the origin point from which the rail carrier names its rate. For example, such rates are published by the Pennsylvania Railroad from Cincinnati, Ohio, Louisville, Kentucky, and other Ohio River points in Pennsylvania Tariff No. 61, I. C. C. 2141. Similar rates are published by the New York Central in its coal tariff I. C. 154-E, I. C. C. (CCC & St. L.) No. 8514. The rates in this latter tariff apply to interior points in Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, and Wisconsin, and their application is provided by tariff note which reads: "The rates contained herein on bituminous coal, carloads, apply on bituminous coal when arriving at Addyston, Ohio, Cincinnati, Ohio, Jeffersonville, Indiana, or North Bend, Ohio, via the Ohio River and will not apply from intermediate stations.

Mr. Enoch: Off the record, if we may.

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: Proceed.

The Witness (Continuing): As to commodities, generally, it is common knowledge that carriers maintain between interior points and the various ports served by them, a rather widespread adjustment of coastwise rates which are lower than their local rates between the same points, the [fol. 2010] coastwise rates being applicable only on traffic moving to or from the ports by coastwise water service. Such rates apply even though the water service from or to the port, as the case may be, is under port-to-port rates not on file with the Commission.

By Mr. Belnap:

Q. What is your exhibit 77, Mr. Schimmel?

By Exam. Taylor:

Q. Before you leave exhibit 76, we have mentioned these lake cargo rates, ex-barge moving through from Ohio River crossings; there are transit rules that would be involved in those cases?

A. No; the lower proportional rate is contingent, in the case of the lake cargo rate, of a haul subsequent to the rail haul.

Mr. Belnap: What do you mean by transit rule, Mr. Examiner?

Exam. Taylor: Such as we have in this case.

Mr. Belnap: You mean where the carriers assure themselves that the rates are applicable.

Exam. Taylor: Yes, or transit privileges like we have on grain, elevation and so forth. These outbound rates from Lake Erie ports on coal are published as lake cargo rates?

The Witness: Yes; naturally, the carriers would police the tonnages in order to see that that tonnage would come over the lake lines to the head of the lakes.

By Mr. Belnap:

Q. Mr. Schimmel, isn't this true: that any time you have a rate whose application is predicated on the traffic having had a prior movement, whether being by rail or barge line [fol. 2011] or lake vessel, that the carriers have to police the application of that rate?

A. Sure; that is true.

Q. Then, to assure themselves—they have to assure themselves that traffic has complied with the condition which merits the rate applicable?

A. Absolutely; and that is the reason they have an inspection bureau; they are the policing agents.

Mr. Day: You mean for coal?

The Witness: For grain; I don't know about the policing arrangement so much on coal.

By Mr. Belnap:

Q. Where they have a tariff which provides policing arrangement or not, the obligation is on them to police for the application of the rate?

A. Yes.

Q. So far as the proportionals on ex-lake and ex-barge tonnage from Chicago, that also happens, the carriers police it?

A. Sure.

Q. And the transit tariff carries the policing requirements?

A. Yes, that is correct.

By Exam. Taylor:

Q. Is that the case with the coal, though?

Mr. Belnap: Mr. Examiner, I don't know; I don't know whether Mr. Schimmel knows whether there is a tariff which specifies how it is to be policed. But whether they put it in the tariff or not could not change one iota the [fol. 2012] application of the rate, just as Mr. Tannehill testified.

Mr. Cole: May I ask a question, in clarification?

Exam. Taylor: Surely.

By Mr. Cole:

Q. Mr. Schimmel, you said you have seen some of these coal tariffs; are these coal rates that you have referred to published at all in the same way as grain rates; that is, are they published as proportional rates?

A. Yes, they are named as proportional rates.

Exam. Taylor: You did not state that to me; that is different.

Mr. Cole: That is what I asked; if you had a tariff, does the tariff carry a designation of that rate as a proportional rate, or specific lake cargo coal rate?

Mr. Belnap: Were you inquiring simply about the name that the carrier puts up at the top of the sheet.

Mr. Cole: Yes.

The Witness: I believe that is shown as lake-cargo rate; but that rate is lower than the local rate.

By Mr. Cole:

Q. That is all right; what I want to understand from you is that all these other tariffs you referred to on coal, they publish a rate that is called lake cargo coal rate; isn't that so?

A. Yes; but in connection with these river rates on the Ohio River, the word "proportional" appears in the tariff.

Q. In what tariff?

[fol. 2013] A. These tariffs that are referred to.

Exam. Taylor: You referred to one there covering the rates through Addyston, Ohio?

The Witness: Yes.

By Mr. Belnap:

Q. Was that a rate from the Logan field to Huntington?

A. I will find it here in a moment: yes, it shows here on the quotation the rates made on the Logan field, from the Logan field to Huntington, the local rate was 87 cents, and the proportional rate beyond by barge was 55 cents.

Mr. Belnap: Mr. Examiner, I think we better verify the heading of that.

Mr. Cole: That is all I am asking for; in other words, I want to see how that rate and that rate column is designated that Mr. Schimmel is now calling a proportional rate.

Mr. Belnap: Yes.

Mr. Enoch: I want to make a motion here to strike all this testimony from the record that has to do with the citation of these different tariffs, and the witness' construction of that tariff, unless Mr. Belnap is willing to put in evidence here either the tariff upon which the conclusion

of the witness is based or the items in the tariff upon which the conclusion of the witness is based. I think that is the only fair way for us to find out what this is all about. Now, Mr. Schimmel,—there is just a bare possibility he [fol. 2014] may be wrong in construing that tariff.

Mr. Belnap: That is unquestionably so; any of us can make mistakes in construing tariffs; the thing Mr. Schimmel can do in the normal way before the Commission is state what the rates are and give reference to them. It is a novel way for me, where you are supposed to bring the tariffs here and put them in evidence.

Mr. Enoch: I am sure my suggestion is not novel.

Mr. Cole: Isn't there a vast distinction between these two sets of circumstances: if we refer to rates 76, 94, 15,—we are referring to rates,—and then cite a tariff as authority for that rate, in which event it is completely unnecessary to bring that tariff in. But now we have a situation here where we are having our attention called to various provisions of the tariff, various rules that are set out. Now, you cannot refer to that in the same way. This man and the other man have called attention to various rules; they say look in tariff so-an-so for that rule. A great many times when you look for that rule, you will find they give you cross reference to something else, or that there will be a column heading with a couple of notes that will refer not only to that rule he gave but some other rule. We have here a nice little problem in conjunction with tariff interpretation. If there are other rules, I believe those rules should be brought here and shown to us.

[fol. 2015] Mr. Belnap: Maybe I can clear it up with this statement, Mr. Examiner: Mr. Schimmel does not offer this evidence as to rates on other commodities lower than local rates conditioned on a prior or subsequent haul by water as having any bearing at all upon the manner in which the grain tariffs here before us should be construed; no question of that at all. It is offered solely for the purpose of showing examples of where the carriers who are respondents in this proceeding follow the practice of providing rates which are directly conditioned on there either having been a prior or subsequent haul of the commodity by water, by an unregulated carrier with rates not on file with the Interstate Commerce Commission, the carriers

in some cases, as in connnection with lake-cargo rates being contract carriers. That is all it is offered for.

Exam. Taylor: Off the record:

(Discussion outside of the record.)

Exam. Taylor: Mr. Enoch, do you still insist that you should have the specific items upon which the witness is basing his reference to these lake-cargo and ex-barge river coal rates in the record physically?

Mr. Enoch: May I have an opportunity to talk with some of my colleagues about it?

Exam. Taylor: We will reserve a ruling until after lunch. Proceed.

By Mr. Belnap:

Q. What is your exhibit 77, Mr. Schimmel?

[fol. 2016] A. Exhibit 77 is a statement covering the inbound billing of the Continental Grain Company and the disposition made thereof as to grain received via barge in the period May 1, 1939, to November 30, 1939, and from the period December 1, 1939, to January 14, 1940. As to corn, this statement also shows for the same periods the tonnage received inbound via rail on even rate or I. P. inbound billing and via rail on lake local billing and the disposition made of such billing. If the proposed rule had been in effect, none of the ex-barge billing would have been canceled against a rail movement beyond.

By Mr. Cole:

Q. What do you mean by even rate?

A. In the grain trade we use the term even rate to cover points of origin in Illinois where the local and the Illinois proportional are the same.

Q. The lake local and the Illinois proportional rate is the same?

A. The regular local; the regular local rate and the specific rate are the same.

By Exam. Taylor:

Q. What is that, interstate or intrastate local?

A. Well, it wouldn't make any difference; when it is an even rate it would apply to an interstate destination.

Q. I mean the rate that you referred to, is that the lake local?

A. That is not a lake local, Mr. Examiner, it is the regu-
[fol. 2017] lar local.

Mr. Brown: What I was interested in, what necessitated the use to the rail billing inbound by lake; did you use so much of that——

Mr. Belnap: He said if the proposal had become effective he would not have used his barge against the rail movement.

Mr. Brown: And vice versa, you would have used your inbound rail against outbound rail; you would have had to switch, wouldn't you?

The Witness: Well, if I had to.

By Mr. Brown:

Q. You did have to, according to this?

A. Yes, some.

By Mr. Belnap:

Q. Mr. Schimmel, this even rate situation, is that term commonly applied in connection with rates to Eastern Trunk Line territory?

A. No; it is more or less just used as a trading term around by the traders and traffic men on the Exchange. Even rates to the trader or the traffic man, means that they do not have anything tied up in that billing; there is no tieup of difference.

By Mr. Brown:

Q. Difference that they might have to pay later to the railroad?

A. I do not get you on that.

Q. It is an even rate if the Illinois proportional is the same: when you ship east you do not owe the inbound rail-
[fol. 2018] road where there might be a difference between the Illinois proportional and the even rate?

A. Yes; that is correct.

Mr. Belnap: I would be very glad to have help straightening it out. I don't think that the term even rate is well explained on this record.

Exam. Taylor: Let us see if you can ask for a specific instance, from a specific point; what is the local rate from so-an-so to Chicago, the local rate and the Illinois proportional rate?

The Witness: I can give you an illustration of that; what is an even rate point? Lacon, Illinois is an even rate point.

By Mr. Belnap:

Q. What is the interstate local rate to Chicago from Lacon?

A. 12 cents.

Q. Now, as far as the interstate rates are concerned, that is the only rate that is published, is it not?

A. Yes, that is right.

Q. And it is published locally to Chicago?

A. That is correct.

Q. And do you call it even rate because that local rate to Chicago plus the proportional beyond to destinations east of western termini is the exact equivalent of the single factor through rate; is that it?

[fol. 2019] Mr. Cole: No;—Mr. Schimmel, is this what you mean: that from Lacon, Illinois the local rate, 12 cents, is the same as the Illinois proportional rate, 12 cents, so that when you get your grain into Chicago, if it moved in on the local billing or if it moved in on the Illinois proportional billing there won't be a premium or a discount on that rate to you grain men when you are handling that grain?

The Witness: There won't be any tieup for that bill.

By Mr. Cole:

Q. Isn't that what you mean?

A. Yes; you fellows talk a different language that I do on this thing.

Mr. Belnap: Don't say yes, then.

By Mr. Cole:

Q. Suppose Lacon had a local rate into Chicago of 9 cents, and an Illinois proportional rate of 12 cents; suppose that?

A. That wouldn't work out.

Q. That would not be even, because there was a penalty against the movement under the local rate; isn't that it? There would be a penalty there?

A. Well, I don't know of such a point as you mention; I don't know that is the same thing here.

Q. Give us an uneven point.

A. Take Lanarm, Illinois; 13 cents local, 12 cents Illinois proportional. Now, the division is the specific up to Chicago, 12 cents, and 26 cents to get to New York; that makes 38.

[fol. 2020] Q. Yes.

A. Now, you have paid 13 cents into Chicago, local.

Q. Yes.

A. Now, that local rate would also apply interstate, or apply on a through continuous movement; that is, wherever there are through rates named.

Q. Now, you have got a premium of 1 cent on that corn, haven't you?

A. Not necessarily.

Q. You call it a tieup?

A. It depends on how we buy it.

Q. You have got a tieup of one cent on that corn?

A. Not necessarily.

Q. At least, it is not even grain, is it; it is not grain that you would say was even rate——

A. No, it is not an even rate point; no.

Mr. Cole: All right; that is what we were trying to get to.

By Mr. Belnap:

Q. Let us take the inbound rate points; that origin was what?

A. Lanarm, Illinois.

Q. And the local interstate rate published to Chicago by the boat line serving Lanarm is what?

A. 13 cents.

Q. Isn't that rate, as far as the interstate application is [fol. 2021] concerned the only rate published by the originating line?

A. That is the only rate published.

Q. To Chicago?

A. To Chicago; well, we were talking about Chicago.

Q. The only interstate rate that is published to Chicago is this 13 cents?

A. Correct. There is only one rate published to Chicago.

Q. All right; in some of this territory we have lake locals; I am trying to get away from that. Now, from that point the through rate to New York is what?

A. 38 cents.

Q. So that your full combination on Chicago of 13 in and 26 out would make 39?

A. That is right.

Q. The shipper will pay 13 cents when he gets to Chicago, will he not?

A. That is correct.

Q. Then, on a reshipment out, somebody is entitled to one penny back on what is paid inbound, plus paying the proportional outbound?

A. Yes; or in that case you may bill out at a balance rate of 25 cents; one way or the other. There are two plans to bill out at the balance rate of 25 cents, or file claim for refund with the inbound carrier on the other application for 1 cent a hundred.

[fol. 2022] Q. You referred to this 12 cents as a specific; by that term, when you get through with New York, that is what it has actually cost to bring it to Chicago; is that the significance of that 12-cent figure?

Mr. Brown: No, what the railroad that brought it in finally gets.

The Witness: That is right.

By Mr. Belnap:

Q. That figure is not published in any tariff?

A. No, it is not published.

Q. Mr. Brown gives you a sheet that tells you what it is, for ready calculation; that is the same thing?

A. Yes; he has a very reliable tariff.

Mr. Brown: You might want to know why that is.

Mr. Belnap: Why was that, Mr. Brown?

Mr. Brown: Because the man who buys, he buys the grain from the receiver here, Mr. Brennan; Mr. Brennan has got to say that that fellow who shipped it from the country gets a price based on 12 cents, charged down in the country; and Mr. Schimmel may have a tieup of 1 cent invested in that bill.

Mr. Cole: I was wondering if Mr. Belnap would have Mr. Schimmel explain the situation of that grain while it is still in Chicago here, before it goes out. That is what Mr. Schimmel started to talk about, is what happened to that grain, and the circumstances in connection with that grain while still in Chicago, before it got out.

[fol. 2023] Mr. Belnap: Let us just continue with this one illustration: now, if this point happened to have a published tariff rate to Chicago which, plus 26 cents, was exactly even with this through rate, then you call it an even rate?

The Witness: That is right.

Q. Now, let us go back to your exhibit 67; can you say as to whether or not the Illinois origins shown on that exhibit are even rate points, or not?

A. All those are even rate points.

Q. So on through shipments by rail from those points to New York the through rate in the tariff is precisely equivalent of the local rate to Chicago, plus the proportional beyond?

Exam. Taylor: Which local rate?

By Mr. Belnap:

Q. The interstate local to Chicago, plus the proportional beyond.

A. Rail Illinois proportional rate, yes.

Q. You do not think it is the local rate to Chicago?

A. Yes, the local rate.

Q. Is it published as a local, Mr. Schimmel?

A. It is published as a local.

Mr. Belnap: Now, while we are on this exhibit 67, Mr. Cole, if you wanted to inquire something about what was done to certain billings while grain was on hand in Chicago, I would be glad to have you ask.

Mr. Cole: No, Mr. Schimmel was going into that; I was [fol. 2024] wondering if the Examiner—we got started off on something else.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. Exhibit 28 in this record, Mr. Schimmel, is a copy of John I. Hay freight bill registered with the Transit Bureau under No. 379106, and covers corn shipped to you from

La Salle; as to that particular exhibit, can you state what was done with the corn as to reshipment from Chicago?

A. Yes; all of that entire bill, the inbound weight being 2,509,040 pounds, was applied against outbound shipments from Chicago on October 31 and November 1, to Baltimore, Maryland, for export, and New York for export, and covered by transit shipping direction numbers 106096, 106099, 106098, 106102, 105949, and 105944.

Q. Those numbers you refer to are the directions which you give to whom?

A. They are those tendered to the Central Inspection and Weighing Bureau, and there rated; and the original receives this transit shipping direction number, and delivered to the outbound carrier for the issuance of rail bills of lading.

Q. Do you as a shipper put the outbound rate on those transit shipping directions?

A. No, sir.

Q. Who does that?

A. The Central Inspection and Weighing Bureau.

[fol. 2025] By Exam. Taylor:

Q. Are these the original transit shipping directions?

A. No; the originals, Mr. Examiner, are in the possession of the carriers. This is a copy made from my office record, which is identical with the original.

By Exam. Taylor:

Q. There is nothing at the foot of those originals to show that the shipper's certificate was completed?

A. Well, our name is signed down here.

Q. Are there any tariff references given?

A. Yes; they show 413 tariff, and the ICC number.

Mr. Belnap: Mr. Examiner, the papers you are looking at, I just asked him to get as far as the tonnage was concerned; and that was a convenient way he got them.

By Exam. Taylor:

Q. What was the purpose of showing reference to the transit tariff down at the foot of these directions?

A. The Inspection Bureau ordinarily require that. If we fail to show that transit tariff number they will call us

and instruct us in the future to put it on there, or they will send it back to us to put on.

Q. It is a requirement?

A. Yes, sir.

Exam. Taylor: Is that as far as you are going with this?

Mr. Belnap: I am going to put in a bill of lading.

Exam. Taylor: Inbound?

Mr. Belnap: Yes. Do you have with you a copy of the [fol. 2026] John I. Hay Company bill of lading covering the inbound shipment by barge indicated on exhibit 28?

The Witness: I do; that is a copy of the original.

By Mr. Belnap:

Q. And this copy was made out by whom?

A. The John I. Hay Company.

Q. Who actually did the typewriting on it?

A. John I. Hay Company.

Q. And tendered it to you for signature?

A. Yes.

Mr. Day: What is the date of it?

Mr. Belnap: This is a bill of lading October 25, 1939, from La Salle, Illinois, to Continental at Chicago. I ask to have that marked as exhibit——

Exam. Taylor: 79.

Mr. Belnap: Exhibit 79 for identification.

(Protestants' exhibit 79, Witness Schimmel, marked for identification.)

Mr. Belnap: And, Mr. Examiner, I have distributed to the parties simply a duplicate of the blank on which this John I. Hay bill of lading is found. May we go off the record, and let Mr. Schimmel just read in the typewriting, so they can copy it in.

Exam. Taylor: All right; off the record.

(Discussion outside of the record.)

By Mr. Belnap:

Q. Mr. Schimmel, tell us precisely how the billing was [fol. 2027] handled on this particular shipment, both as to the bill of lading and the expense bill, exhibit 28.

A. Why, this barge was loaded on October 25. We are in constant touch with our office in La Salle, Illinois, right

at the point where these barges are loaded. The elevator is on the river bank. And our representative there informs us of the loading weight and what the barge contains, the kind of grain. Then, we inform the John I. Hay Company that the barge has been loaded, and that we request that he issue a bill of lading stipulating that it be shipper's order; that is our own method of doing business on shipper's order ladings. And the bill of lading is made up, original and three copies; and our messenger usually, or a Western Union messenger is sent by the John I. Hay Company to the Continental Grain Company office, and we sign a copy for John I. Hay Company's file, and retain the original and two copies for our file.

Q. That is all done in Chicago?

A. All done in Chicago. Now, do you care for me to proceed on to the unloading of this barge?

Q. Surely.

A. The John I. Hay Company transports the barge into South Chicago, coming inbound through the Calumet Sag Canal, reaching the Rock Island Terminal elevator located on the river, and also the rails of the Rock Island, at 93rd and Harbor Street; and we arrange to unload the barge. [fol. 2028] We have the elevator equipped with a marine leg for unloading, a bucket system. The Chicago Trimmers Association are notified by a barge tender; I think he is located at 130th Street, so that they are usually on the job when we are ready to start unloading. And the Board of Trade Weighmaster supervises and obtains the unloading weight for the barge.

By Exam. Taylor:

Q. Commonly called in this record, out-turn weight?

A. The out-turn weight. The following day a certificate of weight is obtained from the Board of Trade Weighmaster; and our Board of Trade Weighmaster and we request John I. Hay Company to furnish us with a freight bill, original and three copies.

Q. Do you advise him of that out-turn weight?

A. Yes.

Q. That is the only way he gets it?

A. That is the only way he gets it. However, if he doubted the weight he could always check it up with the

Board of Trade Weighmaster. The freight bill is paid on the basis——

Q. Who makes the freight bill out?

A. John I. Hay Company makes the freight bill.

Q. At Chicago?

A. At Chicago. And I might mention that in some instances John I. Hay Company makes up the freight bill at the time that the bill of lading is issued; and he shows the billed weight on the freight bill. That is all he has at that [fol. 2029] time; he does not know what the barge will unload at.

Q. That is in bushels, isn't it?

A. That is right. And when he handles it in this manner we, in our office cut the freight bill down, or increase it, to the actual out-turn weight. And the freight is paid on the basis of 1½ cents per bushel.

Q. From La Salle to Chicago?

A. From La Salle to Chicago. The bill, together with our check, is sent over to Mr. John I. Hay, John I. Hay's Company's office to be receipted. Upon receipt of the original and copies, we then present to the John I. Hay—we then present to the joint agency the freight bill for registration. Then, it is returned to our files, available for shipment.

Q. With the inspection bureau's number put on the freight bill?

A. Yes.

Q. Does the bureau keep copies of that freight bill?

A. Yes, they take a copy of it,—the joint agency,—they call that the joint agency; I don't know why. But it is a part of the Central Inspection and Weighing Bureau.

By Mr. Belnap:

Q. Mr. Schimmel, is exhibit 24 a sample of a John I. Hay Company freight bill which was prepared based on the weight indicated at the time of loading, and then corrected to the out-turn bushelage when the barge is unloaded?

A. Yes.

[fol. 2030] Exam. Taylor: We will recess at this time until 2:00 o'clock.

(At 12:30 o'clock p. m., a recess was had until 2:00 o'clock p. m.)

Afternoon Session

2:00 o'clock p. m.

Exam. Taylor: All right, gentlemen; Mr. Belnap withdraws his witness temporarily. Do you have another witness?

Mr. Belnap: Yes; I want to call Mr. O'Connor.
Exam. Taylor: Mr. O'Connor.

D. J. O'Connor, was sworn and testified as follows:

Direct examination.

By Mr. Belnap:

Q. Will you state your name, please.
A. D. J. O'Connor.
Q. By whom are you employed, Mr. O'Connor?
A. Central Inspection and Weighing Bureau.
Q. In what capacity?
A. Assistant Manager.
Q. And how long have you been with that bureau?
A. Twenty-eight years.
Q. Insofar as the transportation of grain into or out of Chicago is concerned, what is done by that bureau?
A. We supervise the transit privileges on that grain, and authorize rates on outbound movements.
[fol. 2031] Q. In so doing, do you act as the agent for the line-haul carriers?
A. That is right.
Q. Are you familiar with the various tariff notes contained in the tariffs of the eastern lines which provide the traffic on which shall be applied the various proportional and reshipping rates published in such tariffs?
A. Yes.
Q. There is evidence in this record, Mr. O'Connor, Mr. Tannehill's exhibit 1, a history of those notes: was there a meeting held at the office of the inspection bureau in the early part of 1935 in which the matter under consideration was as to whether or not the proportional and reshipping rates from Chicago to the east could properly be applied on ex-barge grain?
A. Yes, there was such a meeting.

Q. Was there a minute made in your office as to who attended that meeting and the results of the consideration of the subject?

A. Yes.

Q. Have you that minute with you?

A. Yes.

Q. Would you please refer to it, and tell us who was there.

A. Mr. Bernstein, Assistant Manager of the inspection bureau; Mr. Nash, representing the Pennsylvania.

[fol. 2032] Q. Who was Mr. Nash?

A. He was then General Freight Agent of the Pennsylvania Railroad. Mr. Lantz, of the Erie.

Q. Who was Mr. Lantz?

A. I think he was freight traffic manager at the time. Mr. Patterson, representing the New York Central. He was represented by Mr. Dale; and Mr. Hart, representing the Baltimore & Ohio, represented by Mr. Slater.

Q. And what minute was made of the result of your consideration of the matter?

Mr. Cole: I would like to object to the question asked now as to what minute was made, unless it be further indicated now just the purpose for which they desire that minute. Now, there may be some legitimate reason for that thing in here; I don't know yet. But if that thing is now being introduced for its effect upon a clear interpretation of an unambiguous tariff interpretation, it has no bearing. It is completely irrelevant, and simply confusing the issues. If it is to explain some ambiguity, I think then before it is subject to evidence it must first have —we must first have pointed out to us that ambiguity which they are trying to explain.

Mr. Belnap: I do not possibly see how any representative of an eastern line, could even suggest, by innuendo or otherwise, that there is any ambiguity in the present tariff, since for five long years the rates have been applied to [fol. 2033] the ex-barge traffic. It does not seem to be possible that there could be suggested any ambiguity. However, again only in the most general terms it has been suggested on this record there is some qustion as to whether the rates have been properly employed. I bring to the stand a witness whom Mr. Cole obtained for me, whom I called as the representative of the inspection bureau as to what have been their views and the views of

certain railroad people participating in the conference about which he spoke. That would seem to me to be the obvious thing to do if there is any slightest question as to ambiguity,—show what they have done.

Mr. Cole: Of course, the inspection man is here. It is a question of fact as to what has been done. As to that, I do not think any legitimate exception to a question could be taken, as to what has been done. But to have introduced a minute which would furnish an interpretation of this rule, all of which has been made a part of the record, when Mr. Belnap must state that it is not subject to any ambiguity, I submit that that is not proper evidence of the tariff provision that right here is in the record already.

Mr. Enoch: If the Examiner please, I think we ought to be permitted to see what this minute is.

Exam. Taylor: Certainly; show counsel the minute, please. Do you gentlemen still make the same objection?

Mr. Enoch: I would like to object to it on this ground, [fol. 2034] particularly among others; that I do not understand there is any dispute on this record as to what has been done; and I do not understand that this note, dated as it is, will throw any light on what has been done, or counteract any testimony already spread of record here as to what has been done. And the only purpose that I can see that it would serve here would be to show how somebody else construed the tariff. And I say that is something that is not the proper subject matter of evidence by this witness. If he states anything he should state facts; and then the Commission would draw its own conclusion as to the proper interpretation of the tariff.

Exam. Taylor: In the last analysis the Commission is the place to determine the application of these tariff rules and rates; and whatever these few officials got together and decided as to the interpretation is not the last analysis. It will be received subject to the objection.

Mr. Cole: In other words, I interpret your question to mean that under the circumstances it will be received for what it is worth, subject to that objection?

Exam. Taylor: Absolutely.

By Mr. Belnap:

Q. When was this conference had?

A. January 18th, 1935.

Q. And you have told us who was present; now, will you please read into the record the minute made at the conclusion of that conference?

[fol. 2035] A. "After carefully reviewing Note 20 of Agent Jones' tariff 245 series, it was unanimously decided that this provision was clear in requiring the application of the reshipping or proportional rate from Chicago to Trunk Line and New England territories as covered thereby, on grain reaching Chicago via water transportation line, which would include river grain reaching Chicago via barge lines. On traffic to Central Freight Association and western termini points, the provision of individual roads' tariffs vary somewhat in their language. But the conclusion finally reached was that a reasonable interpretation in line with the many decisions of the Interstate Commerce Commission would admit of applying the reshipping Northwest rates, the same as is being applied at the present time, and has been applied in the past to all water-borne grain reaching Chicago, principally via lake.

"The New York Central Railroad tariff has not been modified to conform to the provisions generally provided for in other Central Freight Association roads' tariffs; and that road has concluded to carefully consider this provision of their tariff to determine whether it would admit of applying the reshipping rate on river grain.

"It was the consensus of the representatives present that the occasion has brought to light the necessity of clarifying tariffs of the Central Freight Association roads in regard to rates which should apply from Chicago on ex-lake as [fol. 2036] well as ex-river grain."

Q. Mr. O'Connor, in the minutes which you just read you dealt first with Note 20?

A. That is right.

Q. That is, as I understand, what covers Eastern Trunk Line and New England?

A. Note 20 in ICC 245 series.

Exam. Taylor: What is the ICC number?

Mr. Belnap: The present ICC number is 3356, the series getting down to G.

By Mr. Belnap:

Q. Then when you spoke as to traffic in Central Freight Association and Western termini points, those rates and

the provisions relating thereto are carried in a different tariff, are they not?

A. At the present time they are carried in 535 series. At the time this record was made those rates were published in the individual roads' tariffs.

Q. And the 535 series, the present ICC number is 3300?

A. Yes, sir.

Q. After this minute was made, did the inspection bureau and carriers give further consideration to this matter of revising the notes providing for application of certain proportional rates to ex-lake and ex-barge grain?

A. Yes, they did.

Q. Did you endeavor to carry out what you said you [fol. 2037] would do; that is, to clarify the note?

A. Our organization is not legislative; it is administrative. And any change in the tariffs would have to be accomplished by the carriers.

Q. That was done by the carriers?

A. Yes, sir.

Q. They did consider, however, that matter of clarification?

A. I believe so.

Q. That is a matter with which you are in contact from time to time?

A. We keep in touch with them, yes.

Q. And you know that to be a fact, from your contact with railroad representatives?

A. Yes, sir.

Q. From whom you act as agent?

A. That is right.

Mr. Enoch: What is the fact, that they considered clarifying them, or that——

Mr. Belnap: I just got as far as they considered them. Then, Mr. O'Connor, did the carriers publish the present Note 40 with the intent of clarifying that question?

The Witness: I would not be qualified to answer.

By Mr. Belnap:

Q. You don't know whether that was the intent or not?

A. No, we are not legislative.

[fol. 2038] Q. I understand that, sir.

A. I am not informed as to the purpose, no.

Q. Regardless of the purpose, was there made effective in June of 1935 an agency tariff carrying a revision of the notes to which I have directed your attention, which is published for the account of all lines east of Chicago.

Mr. Cole: I object to that question, Mr. Examiner. There has been introduced here——

Mr. Belnap: Yes, I know; it speaks for itself. I am sorry I wasted the time to ask the question. Insofar as ex-lake grain, Mr. O'Connor, has it in the past come in here not only from Duluth and that territory which is truly northwest in a geographical sense, but has also come in here from Georgian Bay ports, from Lake Erie ports, as well as direct all-water importations from foreign countries.

The Witness: Yes, there may have been such a movement, yes.

By Mr. Belnap:

Q. You know that to be a fact, do you not?

A. Yes, I know there was some import from foreign countries.

Q. And on that grain has the inspection bureau ruled that so far as Central Freight Association territory western termini points, are concerned the applicable rates are what are termed here the Northwest proportionals?

A. Yes.

Mr. Enoch: I move that answer be stricken out; and I [fol. 2039] object to the question, because the ruling of the Central Weighing and Inspection Bureau is not the point; if he wants to say what was done——

Mr. Belnap: I will correct it, Mr. Enoch: when you said ruling, did you understand me to ask you in a sense that you so applied the rates when it came to the administration of the bureau?

The Witness: What is your question again, please.

By Mr. Belnap:

Q. I am inquiring about the grain which was imported, all-water, to Chicago, the grain which came from the Lake Erie and Georgian Bay ports, as to whether when it came to carrying out your obligation to the carriers of applying the rates on outbound billing, whether or not you did not put in the Northwest proportionals?

A I could not tell you definitely where that import grain from our territory moved. I know some moved to Peoria and Pekin; but whether any went east by rail, I could not say definitely at this time, without referring to our records.

Q. Would it be your opinion that the Northwest proportional would be applicable if the import grain moved into Central Freight Association territory?

Mr. Enoch: I object; he said opinion.

Mr. Belnap: I am taken considerably by surprise by this whole situation. I discussed this matter off the record with people who were going to provide a witness who would [fol. 2040] deal with these subjects. I am confronted with the fact that after five years—that for five years these carriers have applied rates——

Exam. Taylor: There is no question about that.

Mr. Belnap: We come to a suspension proceeding, when the main question ought to be as to whether what is proposed is a lawful change; and I am confronted with general statements that there is no change proposed; these have never applied. Nobody attempts to put a witness on the stand, I am told that this is the lawyer's opinion. Nobody points out any particular phraseology on which they reply in support of that matter. I go to the carrier's own agent, try to find out what as representative of the carriers, has been their opinion, what they tried to do when they published these various rates; and I am met with repeated efforts to stop me and the Commission.

Mr. Day: Mr. Belnap: we are standing four square on the tariff itself; and if you think your position is right, you can stand on the tariff.

Mr. Belnap: I don't know what your position is, and you have never explained it.

Exam. Taylor: Mr. Belnap, this witness, Mr. O'Connor, has stated once or twice, maybe three times, that the bill acts in an administrative capacity; and he carries out the rules as a committee tells him to carry them out.

Mr. Belnap: I don't understand he said anything about [fol. 2041] a committee, Mr. Examiner.

Exam. Taylor: His own testimony that he read into the record was a committee action. You had him read that in the record.

Mr. Belnap: You are relying on this minute as being an instruction for him to follow?

Exam. Taylor: Yes.

Mr. Belnap: I understand that was in the tariff prior to the time Rule 40 was changed, so I have been informed; it is offered with the intention of clarifying——

Exam. Taylor: You can ask this witness any question as to how they acted, what rates they applied on specific shipments, that he can recall; and we will permit him to answer, because he is in an administrative capacity.

Mr. Belnap: The witness has now said he does not recall whether there was any occasion for apply rates. I think it leaves the record in a horrible, sorry state.

Mr. Enoch: I disagree with that, and I think it is wholly unimportant what purpose the eastern lines had in mind when they published Rule 40, or any other. The main question is what did they accomplish when they did; and neither Mr. O'Connor nor any other witness is going to be able to assist the Commission in that, other than point out the tariff provisions.

Exam. Taylor: Point them out and say how they apply. [fol. 2042] Mr. Cole: The thing I objected to what is his opinion.

Exam. Taylor: I will sustain an objection as to opinion.

Mr. Belnap: I respectfully take an exception thereto, and will desist; because that is what I wanted to inquire into from this gentleman on the record.

Exam. Taylor: Exception noted on the record. Is there anything further from this witness?

Mr. Belnap: I have not.

Cross-examination.

By Mr. Day:

Q. Have you with you a copy of PGM 166 of the January 3rd and 4th, 1934, meeting?

A. Yes.

Q. This was the meeting to consider the——

A. That concurred in this.

Q. Yes, but I mean your PGM 166 of the January 3rd to 5th, 1934, meeting?

A. No, I haven't got that.

Q. The provisions of that are incorporated in the document you have shown me here?

A. Yes; this is incorporated over here.

Q. Will you just read what that provision was?

Mr. Belnap: Are you going to show it to me, Mr. Day?

Mr. Day: Yes; this is the action taken at the meeting January 3rd to 5th, 1934.

Mr. Belnap: I think I would like to know about the pur-
[fol. 2043] pose first.

Mr. Day: The purpose is to show, Mr. Belnap, that previously the Central Freight Association had passed a recommendation or resolution that the reshipping and/or proportional rates be not applied in connection with any traffic reaching Chicago, Illinois, via barge.

Mr. Belnap: Mr. Examiner, I think I am entitled to a fair statement of the purpose, when I ask a witness about it.

Mr. Day: I told you.

Mr. Belnap: Of course, he wanted to put in what is in the memorandum; I knew that when he asked him, sir. I think I am entitled to a fair statement of the purpose, not a fact. The document Mr. Day showed me is a circular signed by Eugene Morris as the Chairman of a rate-making body for some of these lines, which is the administrative body,—rather, legislative action. You refused me because Mr. O'Connor is not qualified to go into legislative matter. Counsel for the railroad is going into legislative matters by the same witness.

Mr. Day: No, Mr. Belnap; you have put in here a minute of a meeting of railroads January 18th, 1935, with reference to alleged application of reshipping rates of Eastern lines to barge traffic.

Exam. Taylor: That is not administrative there; that was as to the application of the rules in question.

Mr. Day: The evidence that I desire to have presented [fol. 2044] now is the same kind of resolution adopted at an earlier meeting of the Central Freight Association rails, and showing a contrary action by that body.

Mr. Belnap: That is a joint committee of the Central Freight Association?

Mr. Day: Central Freight Association joint committee, yes, sir.

Mr. Belnap: This is a legislative proposition, on which I understand this witness is not qualified to speak; so I object.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Oh, I think you can put that in. It will be received for such value as it may have.

The Witness: "Further consideration was given to the application of reshipping rates on grain, grain products, and grain by-products from Chicago, Peoria, Pekin, East St. Louis, Illinois, St. Louis, Missouri, and/or Illinois River landings to grain, grain products, and grain by-products reaching those points by barge. Recommended that the recommendation adopted by Central Freight Association general committee meeting November 7th to 10th, 1933, under Docket 241, PGM No. 164; viz, recommended that the reshipping and/or proportional rates be not applied in connection with any traffic reaching Chicago, Peoria, Pekin, St. Louis, East St. Louis and/or river landings via barge [fol. 2045] be rescinded. Further recommended that the reshipping and/or proportional rates be not applied in connection with any traffic reaching Chicago, Illinois, via barge."

By Mr. Day:

Q. Now, Mr. O'Connor, since this conference held in Mr. Bernstein's office on January 18th, 1935, as to which you testified, was held, did you receive any further instructions from railroads in this matter?

A. Not until the other recommendation came out.

By Exam. Taylor:

Q. Not until the one that was read previously?

By Mr. Day:

Q. I am talking about this one that you quoted from the record: now, you have not had anything since then, have you?

A. No; this is subsequent to that. It confirms that.

Exam. Taylor: Mr. O'Connor, that does not mean anything in the record; put the dates in it, and you will have something.

Mr. Belnap: Mr. O'Connor, when you read for Mr. Day, you read a quotation, did you not, from the minutes of the meeting of traffic officials of Eastern lines of January 23, 1935?

The Witness: That is right.

By Mr. Belnap:

Q. And in that minutes you quoted an early resolution, which is the portion Mr. Day had you read for the record; is that correct?

A. That is correct.

[fol. 2046] Q. And in this meeting of January 23, 1935, after they quote that provision Mr. Day had you read, don't they go on and say in substance that they are simply confirming the minute I had you read?

A. That is right.

By Mr. Day:

Q. And the minute that Mr. Belnap had you read was the last you had from the railroad?

A. No, this that I had.

Mr. Belnap: The January 23, 1935, was the last?

By Mr. Day:

Q. And that was just a minute confirming that?

A. Yes.

Mr. Belnap: That meeting of January 23, was a much larger meeting?

A. Yes.

Q. Almost all of the lines were represented at that meeting,—eastern lines?

A. Yes, eastern lines.

By Mr. Day:

Q. The minute or the resolution which I had you read was also a general committee resolution, was it not? I am talking about the PGM 166.

A. That was also a general committee meeting.

Q. General committee meeting?

A. That is right.

Mr. Day: That is all.

Exam. Taylor: The witness is excused.

[fol. 2047] (Witness excused.)

Exam. Taylor: Mr. Benson, before we go on with the next witness, have you something?

S. H. Benson, recalled, previously sworn and further testified as follows:

Cross-examination (Resumed).

The Witness: Mr. Macaulay asked me yesterday to confirm the figures showing the receipts of grain at Chicago for 1938 on page 7 of my exhibit 19. That page shows that the receipts of grain at Chicago via lake all came from Duluth; and I am now in position to say that that statement is correct. All that grain which arrived at Chicago in 1938 via lake came from Duluth, as shown in the Annual Board of Trade report of 1938. Mr. Macaulay asked me also as to the receipts at Chicago in 1939. The Board of Trade records show merely by lake, without showing the origin lake port. I have developed that the wheat, 211,000 bushels, and the rye, 986,000 bushels, came from Duluth; and that the barley amounting to 344,000 bushels came from Ft. William, Ontario. The explanation for not showing the origin port in the 1939 receipts is that the compiler did not think it was necessary; that under ordinary circumstances, what grain Chicago receives by lake comes from the head of the lakes, and that it was only during the period that Chicago received grain from other ports that he did show the head of the lakes ports.

[fol. 2048] By Mr. Macaulay:

Q. Will you state what you mean by the head of the lakes?

A. Well, the term ordinarily implies Duluth, Superior, Ft. William, Ontario, and Port Arthur, Ontario.

Mr. Macaulay: That is what I wanted to clear up.

Exam. Taylor: Anything from this witness?

Mr. Day: Yes.

Re-direct examination.

By Mr. Day:

Q. All of these origins that you mentioned, Mr. Benson, are in what is described as Northwest territory in the tariffs?

A. As far as lake receipts at Chicago are concerned.

Q. That is what I meant.

A. The Central Freight Association tariff arbitrarily gives such business the Northwest rates.

Q. It always defines the Northwest territory as all points in Wisconsin, all points in Minnesota, all points in the Dominion of Canada, all points in northern Michigan, all points in North and South Dakota, and so forth?

A. That is true;——

Q. All of these movements that you referred to in your testimony just now did originate in that Northwest territory?

A. That would be true as to all-rail receipts.

Q. No, I mean as to these lake receipts to which you have just testified?

[fol. 2049] A. Well, I would put it this way: that if any shipments arrive via rail originating at those ports, they are in Northwest territory; but as to lake shipments, anything we receive by lake is arbitrarily in Northwest territory.

Q. You misunderstand me; you gave the origin of various lake shipments arriving at Chicago?

A. Yes, sir.

Q. Those origins are all in what is described as Northwest territory in the tariff?

A. Well, I must repeat, only as to all-rail shipments. The point is this: if we got a lake shipment from Montreal, it would still take the Northwest rate.

Mr. Belnap: Would that also be true as to Toledo, Ohio?

The Witness: Any port.

By Mr. Day:

Q. Northwest territory as described in Rule 40 is points in Wisconsin, points in the upper peninsula of Michigan, points west of the Minnesota-Wisconsin state line, except trans-Mississippi River territory as described in note 20, pages 77 to 78, points in the Dominion of Canada; namely, all points in the Provinces of Alberta, British Columbia, Manitoba, and Saskatchewan. Now, all of those origins as to which you testified shipments of grain came into Chicago by lake originated in that Northwest territory, did they not?

A. Not by lake; no, sir.

Mr. Day: All right.

[fol. 2050] By Mr. Cole:

Q. The point of origin, say that it is Duluth, and a shipment is made from Duluth by rail and a shipment is made from Duluth via lake; is Duluth in a different place in each instance?

A. The application——

Q. I don't care anything about that, Mr. Benson; is Duluth in a different place in each instance?

A. Well, I am not going to answer the way you want me to.

Q. No, I don't mean to——

A. The application via lake is entirely different from that via rail.

Mr. Cole: I understand that;——

Mr. Brown: That is not what he wanted to get, Mr. Benson; he wants to know if Duluth, Superior, and Port Arthur and Fort William are not in what is known as the Northwest territory in the rail tariff. They are so described in the rail tariff, aren't they, irrespective of whether they move anything or not; aren't they located in the Northwest territory, as described in the tariff?

The Witness: I would say yes, as to shipments arriving via rail.

By Mr. Brown:

Q. Now, Chicago is in Illinois, whether it ships anything or not, isn't it? That is what we want to get at; isn't Chicago in Illinois, whether you ship anything——

A. I know what they are getting after; I know exactly. [fol. 2051] Mr. Belnap: Mr. Examiner, if it is purely a matter of geographical location, the Commission takes judicial notice.

The Witness: I want to say this as to lake receipts: it does not make any difference as to what port those shipments come.

Mr. Belnap: Why is that?

Mr. Enoch: No, where is it?

Mr. Brown: We are going into something that was not raised. Mr. Macaulay, did he answer your questions satisfactorily?

Mr. Macaulay: Yes.

Mr. Brown: All right; now the witness is through.

Mr. Belnap: I still have a question pending. He is distinguishing between lake and rail, and the question did not indicate that at all.

Exam. Taylor: Mr. Belnap has a question on the records.

Mr. Belnap: Why the tariff, Mr. Benson, comes to the conclusion that any lake movement is as if it were from the northwest.

Mr. Brown: Object.

Mr. Enoch: Object.

Mr. Belnap: From the tariff I want him to tell us why.

Exam. Taylor: The witness may state if he knows, subject to rebuttal.

The Witness: What is the question?

[fol. 2052] By Mr. Belnap:

Q. Why, Mr. Benson, you treat any lake shipment as a northwest shipment; that is what I understood you to say, from the tariff that every one is considered northwest, whether from Montreal, Toledo, or Buffalo, or Duluth, or where it was from.

A. Including Illinois?

Q. Including Illinois; now, why is that, Mr. Benson, from the tariff?

A. The way I interpret this tariff,——

Mr. Enoch: Object to that.

The Witness: That is all I can give you, is my interpretation.

Mr. Belnap: What is objectionable about having a man that is experienced with tariffs giving his interpretation?

Exam. Taylor: You can go to your particular provision and tell how you get it, not your opinion; we are talking about a specific tariff rule now, tariff application.

The Witness: Well, the application starts out with "Rates on grain subject to this note,—" that is Note 40.

Mr. Enoch: What tariff provision is that?

The Witness: It is a part of Note 40.

Mr. Enoch: Well, is it the present Note 40; is that what you are referring to?

The Witness: Yes, sir; the present Note 40, in Central Freight Association 535-A, ICC 3300. This particular part [fol. 2053] of Note 40 starts out with "Rates on grain subject to this note will apply on grain originating in the fol-

lowing described territory: (a) points in Wisconsin; (b) points in the upper peninsula of Michigan; (c) points west of the Minnesota state line, except points in trans-Mississippi River territory as described in Note 20, pages 76 and 77; (d) points in the Dominion of Canada; viz. all points in the Provinces of Alberta, British Columbia, Manitoba, and Saskatchewan; (e) on shipments which arrive by boat lines at Chicago, Illinois, Kewaunee, Wisconsin, Mackinaw City, Michigan, Manitowoc, Wisconsin, Menominee, Michigan, Manistique, Michigan, and Milwaukee, Wisconsin." I would say that under that application any shipment which arrives at Chicago by boat is subject to the northwest grain rate, whether it comes from Duluth, Illinois, or Montreal.

By Mr. Belnap:

Q. Has the traffic department of the Chicago Board of Trade so advised the members of the Board?

Mr. Enoch: Object to that.

The Witness: Yes, sir.

Mr. Enoch: Just a moment; I object to that.

Exam. Taylor: On what grounds.

Mr. Enoch: It will not help the Commission to have Mr. Benson interpret. That is a conclusion to which the Commission is going to come, after it reads this tariff.

Exam. Taylor: Objection sustained. Is there anything [fol. 2054] in rebuttal to that?

Mr. Macaulay: One question on recross.

Recross-examination.

By Mr. Macaulay:

Q. Mr. Day asked if it applied under Note 40; I would like to ask if it applies under Note 20 in ICC 245-F.

Mr. Brown: Well, now, Mr. Examiner, I don't think Mr. Benson cares what he may have told anybody, and I do not.

Mr. Macaulay: I am not asking that.

Mr. Brown: I know it; but you are asking him to interpret a tariff which he did not introduce. Mr. Benson went back to explain the only thing he introduced here, his statistical exhibits. Now he has gone just as far as his origi-

nal examination went, and a great deal further; and I am going to object to any more.

Mr. Macaulay: Unless Mr. Day withdraws his question,—I think I should be allowed to ask whether these rates apply under Note 20.

Mr. Day: Mr. Macaulay, he didn't answer the question, and I didn't stress the question. All I asked him was whether these points of origin as to which he testified shipments moved from were not points of origin in the Northwest territory.

Exam. Taylor: You are going outside of the direct examination? It appears that you are, and I must sustain Mr. Brown's objection.

[fol. 2055] Mr. Macaulay: Just because Mr. Day did not get an answer to a question he asked,——

Exam. Taylor: The ruling is already made, Mr. Macaulay.

Mr. Enoch: Mr. Benson, did you read that part of Note 40, the heading of which is in large letters, bold face, "Grain (Northwest)?"

Exam. Taylor: Do you object to this, Mr. Brown? This seems to be outside of his direct.

Mr. Enoch: This is what he did read.

Mr. Brown: What part of it didn't he read that is material?

Mr. Enoch: I want to know what he did read.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Is that all from Mr. Benson? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Resume with Mr. Schimmel.

J. J. Schimmel resumed:

Direct examination (Continued).

Exam. Taylor: Off the record.

(Discussion outside of the record.)

By Mr. Belnap:

Q. Mr. Schimmel, I think you had concluded describing the billing, both bill of lading and expense bill incident

[fol. 2056] to the handling of shipments for you by John I. Hay Company; now, have you also had shipments handled for you by the A. L. Mechling Barge Line?

A. Yes, sir.

Q. Now, will you go through the same detail, as to how you secure a barge, who makes out the bill of lading, and when it is signed if there is any difference as to the handling of shipments at destination, and when there is any difference in the way expense bills are made out and handled.

Exam. Taylor: Who is the shipper?

Mr. Belnap: Continental Grain Company. From what origins have you had Mechling handle shipments for you?

The Witness: Well, from LaSalle, Illinois, Peoria, Illinois, and Lacon, Illinois.

By Exam. Taylor:

Q. None from Morris?

A. No. Mechling has towed grain that we have purchased down there, but he has towed it for the seller.

By Mr. Belnap:

Q. As I understand, on the Morris shipments you have your dealings for paying somebody transportation charges for the account of the shipper with the Allied Barge Corporation; is that correct?

A. That is correct.

Q. Even when Mechling tows the barges?

A. That is correct also.

Q. But what you are going to now talk about is where [fol. 2057] Mechling handled grain for the Continental Grain Company in Mechling's own equipment; is that correct?

A. That is correct.

Q. How do you get the barge, and all that sort of thing?

A. Let us take LaSalle as typical: the same thing would be correct at Peoria or Lacon. We advise the A. L. Mechling Barge Line that we are in a position to ship a barge load of grain, and he usually at that time advises us when we may expect delivery of an empty, a barge at our elevator siding in LaSalle.

By Exam. Taylor:

Q. Did you say elevator siding?

A. Elevator dock; the same as in the instance of Hay, we are in constant contact with our LaSalle office, who inform us of the loading weight of the barge and the kind of grain loaded therein. We immediately inform the A. L. Mechling Barge Line of Joliet the barge has finished loading, it is ready to be towed into Chicago; and request that bill of lading be issued and mailed to us, together with a freight bill showing the billed weight. The barge arrives at our elevator at South Chicago, and we unload the barge and obtain out-turn weights from the Board of Trade Weighmaster. Immediately after noting the out-turn weight we correct the freight bill to the out-turn basis of weight and make payment by check, and send the freight bills along to the A. L. Mechling Barge Line for receipted copies. These receipted copies are returned to us, and are sent to the joint agency for recording. I might mention, a copy of [fol. 2058] the freight bill is retained by the joint agency, and the original returned to us for transit purposes.

By Mr. Belnap:

Q. Is the bill of lading you get from Mechling on the form that has already been made a matter of record here, exhibit No. 49?

A. I don't know that I saw that form, the Mechling form; —yes, it is the same as exhibit 49.

Q. Mr. Schimmel, since the preparation of exhibit 77, has the Continental Grain Company sold a substantial quantity of river grain for rail movement to Baltimore for export?

A. It has.

Q. Is that the process being loaded now?

A. Yes, sir.

Q. How many cars are involved?

A. Approximately 300 cars.

Exam. Taylor: Mr. Belnap, pardon the interruptions: have you concluded the statement as to the handling of the traffic into Chicago?

Mr. Belnap: Just one other item: I will just finish this one point, and I will go back. You say approximately 300 cars?

The Witness: That is correct.

By Mr. Belnap:

Q. That tonnage is being shipped on the proportional rate from Chicago to Baltimore?

A. Yes, sir.

[fol. 2059] Q. And you are surrendering port billing in order to get that rate?

A. A 16-cent rate, yes.

Q. What is that, corn?

A. Corn.

Q. When it comes to the grain which is brought to your elevator having been purchased by you from the Allied Grain Dealers, what do you have by way of—do you use any bill of lading on that shipment?

A. Yes; the Cooperative Allied Grain Dealers forward the original bill of lading to us; and that document is necessary to be registered under the United States Warehouse Act, to send to the custodian as evidence that the grain is ours. And that is stamped on the original bill of lading, and returned to us. That is after the barge is unloaded.

Q. That is a Mechling Barge Line bill of lading, is it?

A. Yes, that is right.

Q. On the form that has already been introduced in this record as exhibit 49?

A. That is right.

Q. But you have nothing to do in securing the issuance of that bill of lading, have you?

A. Nothing whatever.

Q. When the grain arrives at Chicago, about which we are talking handled in the barges of the Allied Barge Cor-[fol. 2060] poration, what do you have to do with it, as far as paying freight charges?

A. Lowell-Hoit & Company call us to obtain the unloading weight, and they verify that weight with the Board of Trade Weighmaster; and usually the following day after unloading, present us with a freight bill. And we issue a check.

Q. Payable to whom?

A. Payable to the Allied Barge Corporation; and send it up to Lowell-Hoit & Company who act as agents, as I understand it, for the Allied Barge Company; and they receipt the freight bill.

Q. In their own name, or in the name of Allied Barge Corporation?

A. In the name of Allied Barge Corporation.

Q. And send you back the receipted bill?

A. And copies.

Q. And you handle it as you did these other bills?

A. In the same manner from there on.

Mr. Belnap: Does that cover it sufficiently, Mr. Examiner?

Exam. Taylor: I would like to know whether in the transaction in connection with the Cooperative Allied Grain Dealers you buy that directly from that corporation, or whether you buy it through some intermediary?

The Witness: Well, some is bought direct from the Co-operative Allied Grain Dealers, and in other instances we have purchased from Lowell-Hoit & Company.

[fol. 2061] By Mr. Belnap:

Q. Who acts as a receiver?

A. They are a receiver on the Board.

By Exam. Taylor:

Q. They act as the agent of the Allied Grain Dealers?

A. I could not say as to that; they act as agent in regard to the handling of the freight on these purchases. Now, as an agent otherwise, I could not say.

By Exam. Taylor:

Q. You just got through saying that sometimes you bought through Lowell-Hoit & Company.

A. We buy direct from Lowell-Hoit; they offer us grain, and we buy it.

Q. And then when they make delivery it is Allied Grain Corporation grain?

A. Beg pardon?

Q. You buy it from Lowell-Hoit, and when they make delivery it is Allied Grain Corporation grain?

A. Yes, presumably they buy it from the Co-operative Allied and then sell it to us.

By Mr. Belnap:

Q. But the Examiner asked you, Mr. Schimmel, at the time it is delivered to you is it Allied Grain Corporation's grain?

A. No.

By Exam. Taylor:

Q. Whose grain is it?
A. It is Lowell-Hoit & Company's; we buy it from them.

By Mr. Brown:

Q. While it is afloat?
[fol. 2062] A. I couldn't say; I think perhaps it is done both ways. Sometimes while it is afloat; some of it is booked on 10 or 15 days; 30 days, and so forth.

Mr. Enoch: May I ask a question right there?
Mr. Belnap: Yes.

By Mr. Enoch:

Q. I understand now that in some instances you buy direct from the Allied Grain Corporation through Lowell-Hoit & Company in Chicago?
A. Oh, no.
Q. In some instances?
A. No.
Q. In other instances you buy direct from Lowell-Hoit & Company grain which Lowell-Hoit & Company has bought from Allied?
A. That is right.

By Mr. Belnap:

Q. The latter is always the case when you deal with Lowell-Hoit & Company in the purchase of grain?
A. Yes; they evidently get the grain from the Co-operative and Allied; it comes from Morris, and that is what I would naturally expect.

Exam. Taylor: The reason I asked was because you first, as I remember, said that you bought from the Co-operative Allied Grain Corporation.
The Witness: There is two distinct transactions here, Mr. Examiner: on the one hand we purchase direct from Co-operative Allied Grain Dealers.

[fol. 2063] By Exam. Taylor:

Q. Yes.
A. Then, in another instance we purchase from Lowell-Hoit & Company.

Q. Yes; the way you answered Mr. Enoch, it seemed that you were reversing the proposition again. Will you read Mr. Enoch's question, Mr. Reporter.

(Questions and answers read.)

By Mr. Belnap:

Q. Mr. Schimmel, exhibit 29 is a copy of an A. L. Mechling Barge Line bill covering grain shipped to Continental Grain Company at South Chicago via barge from—registered with the transit bureau under No. 391585, shipment being November 18th, 1939. Will you tell us how that billing was disposed of.

A. The entire freight bill was applied for cancellation against steamer James H. Reed, loaded from South Chicago on November 26th. And the usual lake cancellation form for surrender of inbound billing was used to cover that cancellation.

Q. Now, the inbound freight bill covered 1,566,610 pounds; what was the total amount of the outbound pounds on *y*hat steamer?

A. 15,540,000 pounds.

Q. Against that outbound shipment, did you likewise cancel a very considerable amount of rail expense bills?

A. Yes, I did.

Q. All the expense bills, you say, surrendered are ar-[fol. 2064] ranged, are they not, on a form addressed to the Central Inspection and Weighing Bureau?

A. They are.

Q. Giving the information as to the outbound shipments, and giving reference to the bill's number on the bills to be canceled?

A. That is correct.

Q. Now, in so submitting that document to the Central Weighing and Inspection Bureau, do you also execute a transit house certificate, that you would execute in case you were making a rail shipment beyond Chicago?

A. Yes.

Q. And will you state what are the terms of the certificate that you execute when you tender either ex-barge, ex-lake, or ex-rail billing for cancellation because of an outbound shipment by lake?

A. The above-described freight bills are hereby tendered in accordance with requirements of freight tariff No. 288,

ICC 1014. That looks like an old one to me; ICC 1014 issued by W. J. Kelly, Agent, and we hereby certify that said freight bills are legally represented by the freight bills as above stated. This is a statement of transit house certificate on the bottom of the lake cancellation form.

Q. And are you now using an old form which has a previous tariff number on it?

[fol. 2065] A. Yes; maybe that is the only form they supply. There is some other tariff reference shown on that, that is more current on the new forms, if they have them.

Q. Then, as I understand it, Mr. Schimmel, the billing listed on this document that you tender to the inspection bureau is canceled, and is no longer available for reshipment beyond Chicago by rail?

A. That is correct.

Q. Now, what, Mr. Schimmel, is your exhibit 78?

A. Exhibit 78 is offered in rebuttal to the testimony offered by witness Bradford. It deals with rates on grain from various lines in control and northern Illinois to Louisville, Kentucky, both via Chicago and via Indianapolis, and shows the extent to which a grain merchant at Indianapolis can purchase grain in Illinois to be thence reshipped to Louisville on a lower basis of through charges than a Chicago merchant storing grain at that point. This rate advantage to Indianapolis obtains from a substantial portion of the lake local territory south of the Illinois River, as well as from a substantial portion of Illinois extending beyond the lake local territory. I selected Louisville for the purpose of this comparison because of the tremendous quantity of corn moving to that point. From all territories the movement of corn to Louisville is a very substantial amount. Generally speaking, a similar situation, Chicago versus Indianapolis, is true in respect to the rates to Cin-[fol. 2066] cinnati, although there would be some variation here and there as compared with what is shown to Louisville on this exhibit.

Exam. Taylor: Is that all?

The Witness: That is all.

Exam. Taylor: Recess five minutes.

(A short recess was taken.)

Exam. Taylor: Gentlemen, come to order. Proceed, Mr. Belnap.

Mr. Belnap: That concludes Mr. Schimmel's direct.

Exam. Taylor: Are there any questions by protestants? (No response.) Cross-examine. Mr. Cole?

Cross-examination.

By Mr. Cole:

Q. Mr. Schimmel, at the beginning of your direct testimony you said that you were giving traffic evidence for the group; whom did you refer to as being represented by that group?

A. Cargill, Incorporated, Stratton Grain Company, Norris Grain Company;—Norris, by the way, will have another witness.—Continental Grain Company; Santa Fe Elevator Corporation; Rosenbaum Brothers; B. A. Eckhart Milling Company; E. R. Bacon Grain Company.

Q. Mr. Schimmel, when you had exhibit 68 before you you stated, as I made a note, that Note 40 of the tariff as carried in your exhibit 68 made applicable the proportional [fol. 2067] rate on both barge and lake grain.

Exam. Taylor: What page is that, Mr. Cole?

Mr. Cole: Note 40 is in exhibit 68, on the 5th page.

Exam. Taylor: That is the present Note 40, is it?

Mr. Cole: Yes, that is the present Note 40.

By Mr. Cole:

Q. I call your attention to the language beginning at the end of the 5th line of Note 40, reading this way: "Provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination;" and with that language in mind, I ask you whether on any shipments that you may know about, shipped by any of this group that you represent to Central Freight Association destinations, whether there was any attempt made to protect the application of the local rate from Chicago under the provisions of that phraseology that I just read to you?

A. Mr. Cole, I believe that you have the wrong note, or maybe I don't understand you; because the Note 40 on page 5 is the Note 40 in 245-F series, I think, which covers an application at Peoria.

Q. Well, can you tell me the page about which the present Note 40 from Chicago to Central Freight Association is shown, in your exhibit 68?

A. Page 13.

Exam. Taylor: Let us get it straight; what does the one [fol. 2068] on page 5 refer to, again?

A. It is rates to the Eastern territory, and applicable from Peoria, and not from Chicago. I understood we were talking about Chicago.

By Mr. Cole:

Q. And at page 13, Note 40, if you will refer to the fourth line in that Note 40, you will see a provision beginning this way,—and I am reading from there on, beginning with the word provided: "Provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the shipping point to destination." Did any of this group that you represent, Cargill, Stratton, Norris, Continental, Santa Fe, Rosenbaum,—do you know whether any of them ever protected the local rates from Chicago under the terms of that provision?

A. No, none, to my recollection.

Exam. Taylor: Let's see if I understand, now, Mr. Cole: you are asking this witness whether on any of the shipments made by the firms referred to charges at ultimate destination, including the rates into Chicago as well as the proportional or reshipping rates out, were less than the local rate from Chicago to the destination of the shipment out of Chicago.

Mr. Cole: Well, in effect, my question was that, Mr. Examiner; but I asked him whether they ever attempted to protect that provision.

[fol. 2069] Exam. Taylor: Who?

Mr. Cole: Any of these people that he represented.

Mr. Belnap: What do you mean by protect, Mr. Cole?

Exam. Taylor: That is the word that is bothering me.

Mr. Cole: Well, I will put it in a different way, then: on shipments of this barge grain to Chicago, which was later reshipped via rail from Chicago to destinations in Central Freight Association territory, do any of these people whom you represent, do you know whether the freight charges finally paid on that movement, the total charges did at least equal the local rate from Chicago to that final destination in Central Freight Association territory?

The Witness: Did at least equal?

By Mr. Cole:

Q. Yes, did at least equal.

A. I could not say as to the other firms just what their mechanics in their operation would be; whether they did or not. I never see their records. As to Continental, no.

Q. Looking at the latter part of that rule, subdivision E, it states, "On shipments which arrive by boat lines at Chicago, Illinois;" have you in the conduct of your business interpreted that provision as though it read "On shipments which arrive by barge line at Chicago, Illinois;" so that do you understand that boat and barge refers to the same thing?

A. There is another item in the——

Exam. Taylor: Well, can you make your answer respon- [fol. 2070] sive to the question and then make your explanation?

A. Yes, I consider the barge line the same as a boat line. It is synonymous; in the 535-A Series, ICC 3300, Item 5——

By Mr. Cole:

Q. What page?

A. Page 92; application of proportional rates,——

Q. Pardon me, Mr. Schimmel; I didn't follow where you were reading from?

A. 535-A, Item 5, proportional rates named herein which by their terms are limited in their application to traffic destined to or originating at specific points or territories including rates which are published for application on traffic from beyond, or when destined beyond, are applicable only when the entire through movement is performed by the rail carriers, or water-and-rail carriers under rates lawfully on file with the Interstate Commerce Commission.

The foregoing is not to affect any rates now published carrying provisions that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic. C. F. A., I. F. A. 21911.

Q. On page 1 of your exhibit 68 you carry five different series or bases of rates at the top of those columns; the first one, you say that that column refers to rates on grain originating in trans-Mississippi River territory; the next one, Northwest; the next one, re-shipping, and the next one, proportional. Is this the way it appeared in the tariff from which you took these rates to set them out here?

[fol. 2071] Exam. Taylor: Now, just a minute; I believe you stated there were five, you read four.

Mr. Cole: The next one is local. I didn't refer to that. Is that the way these different bases of rates appear in the tariff from which you took this material to put it on your exhibit?

The Witness: Yes, there is four distinct applications to Central Freight Association territory: proportional or reshipping, commonly called, to the Trunk Line territory; that makes the fifth, then, taken from the tariffs.

Exam. Taylor: Just let me understand it too, Mr. Cole.

Mr. Cole: Yes, sir.

Exam. Taylor: The first one, trans-Mississippi territory rates; does that apply to Central Freight Association?

The Witness: Yes, sir.

By Exam. Taylor:

Q. Not to Trunk Line; that does not apply to Trunk Line?

A. No, that does not apply to Trunk Line, no. It will apply under the—trans Mississippi billing will apply to Trunk Line territory.

Q. I mean the first one you have here.

A. Central Freight Association, yes.

Q. The second one, that applies to——

A. The Northwest.

Q. I know, but to what territory eastbound?

[fol. 2072] A. To Central Freight Association.

Q. How about the reshipping rates?

A. Also to Central Freight Association.

Q. And the proportional, or next to the last one?

A. Those rates apply to the Eastern Trunk Line territory.

Exam. Taylor: Thank you.

By Mr. Cole:

Q. Now, Mr. Schimmel, when you have gone to a rate tariff and discovered the rates set up under three bases, such as say trans-Mississippi, Northwest, and reshipping, and you see three levels of rates to the same destinations, what is it necessary for you, then, to do in order to dis-

cover which of those columns of rates you are going to use when you make a shipment?

A. If you will pick out some specific origin, I can answer your question.

Mr. Cole: Well, may I go off the record?

Exam. Taylor: Certainly, off the record.

(Discussion outside of the record.)

Exam. Taylor: Back on the record:

By Mr. Cole:

Q. If you have grain in Chicago which came to Chicago from some other point outside of Official territory, and you wanted to ship the grain beyond Chicago, and you looked into the tariff and you saw those three columns, how would you then determine what level of rate was to be applied to that movement beyond Chicago?

[fol. 2073] A. Then, again, I must ask you how this grain is sold. That would be the deciding factor with me.

Q. How the grain is sold?

A. How the grain is sold; that would cause me to determine which bill I would use. So I must know that before I can answer your question.

Q. Where you sold it, or how you sold it?

A. Destination; on what basis it is sold.

Q. You want to know the destination?

A. Well, and then too whether it is sold delivered or whether it is sold to that point delivered Philadelphia, or to what point; maybe it is sold delivered Ohio River.

Q. Well, suppose that you have in Chicago grain that came from points beyond Chicago, the origins not being located in Official territory however, and you have sold a car of grain to a man at Cleveland, Ohio, for consumption at Cleveland, Ohio; and you look in your tariff and you see these three columns of rates, trans-Mississippi, Northwest, and reshipping; how do you then determine what level is going to apply to that shipment from Chicago to Cleveland?

A. I would determine by the level of the rates. The trans-Mississippi is the lower rate.

Q. So that in that event you would use from Chicago to Cleveland the level of rate that is shown under the trans-Mississippi column?

[fol. 2074] A. If I had that kind of billing.

Q. That is what I am getting to; if you had in your office a bill that enabled you to use that rate, you would use that rate; is that what you have answered me?

Exam. Taylor: And that billing was properly registered?

The Witness: I don't think you quite get what I am driving at, either: that our transit operation is a little bit different than just strictly these reshipping rates. There would be other conditions there that might cause us to apply some other kind of a bill. We might decide to hold the trans-Mississippi bill for some other point that we might have sold. There would be too many complications enter into the application of this billing, that it is very difficult to say, Mr. Cole, unless I just had the billing in front of me.

Mr. Belnap: On the matter of emergency grain, I did not go into that; I did not understand Mr. Cole's question was directed to that. You have not testified on direct about emergency, and how you have handled billing in connection with sales; we are not going to have any cross-examination on it.

Mr. Cole: I think Mr. Schimmel can see what I am driving at; if I ask him this: supposing you as traffic manager of this outfit decided to use the trans-Mississippi billing on that shipment from Chicago over to Cleveland, what would you do in order to pick out a trans-Mississippi billing that would enable you to use rates under the trans-Mississippi column?

[fol. 2075] The Witness: I would check the trans-Mississippi territory naturally, and see if my point was within that territory.

By Mr. Cole:

Q. Where would you go to find out whether your origin was within trans-Mississippi territory?

A. The territorial directory.

Q. And where is that territorial directory?

A. You mean what territory?

Q. No, where is that directory; what would you go to now, to find out whether your origin was in trans-Mississippi territory?

A. I think it is published—Jones' 3-F; I don't know the ICC number.

Q. Is it the same territory that is covered in these notes that you carry in your exhibit 68?

A. Yes, that would be the same note.

Q. Those notes in exhibit 68 defining Northwest territory, its geographical limitations, and describing southwest territory and its geographical limitations, are those notes the same thing you referred to as the territorial directory?

A. I believe it is the same.

Q. Now, you say you would pick out a bill and you would see whether that origin point was actually located in the trans-Mississippi territory, then, wouldn't you?

A. Correct.

Q. Then, if you surrendered that bill for the car that you [fol. 2076] were shipping from Chicago over to Cleveland you would get the benefit of the trans-Mississippi River proportional rate out of Chicago, would you not?

A. That is right.

Q. Now, when you handle a shipment that you are making out of Chicago to the same place, from Chicago to Cleveland, you sold a man a car of grain for delivery at Cleveland for consumption at that point, he is not concerned with his ability to carry it on to the seaboard, or to ship it down to the Ohio River; and you want to use, and you decide you would like to use a portion of the stuff that moved in here along the Illinois waterway; so you go pick up your balance credit of your Illinois waterway inbound stuff; then what do you do to determine the application of the proper proportional rate on that?

A. Refer to the Note 40, 535-A, use the Northwest application. I don't know why.

Q. That is right; and the final point that you are brought to there is the level of these rates which are carried in these tariffs under a column headed "Northwest," is that not so?

A. That is right.

Q. So in that event, through the machinations of this cancellation of the documents with the transit bill you have definitely used a shipment which came from the Illinois territory as an origin, going to Cleveland as a destination, [fol. 2077] some matter that originated within Official territory for destination within Official territory and applied

against it a balance or proportion that was carried in a tariff headed "Northwest"; is that correct?

A. Yes, that is correct.

Q. In reference to your exhibit No. 69, there was some discussion of this matter of equalization; you said that grain from the Illinois origins was not equalized through Chicago and Peoria to destinations either in Central Freight Association territory or Trunk Line territory, didn't you, Mr. Schimmel?

A. I mentioned Battle Creek and Detroit as specific.

Q. Those are destinations in the Official territory?

A. Yes.

Q. Do you understand the difference between this situation and the situation that I will call to your attention later; there is grain moving from origins outside of Official territory, Southwestern origins, and Northwestern origins, to the various gateways, thence to destinations in Central Freight Association territory, Trunk Line territory: now, are you familiar with, or do you know whether that grain which moves from Southwest territory and Northwest territory is equalized through Chicago, Peoria and St. Louis?

A. Yes.

Q. That grain is?

A. Minneapolis and Duluth as to Chicago and Peoria are [fol. 2078] equalized; I do not believe St. Louis is equalized in adjustments to the east.

Q. That is correct; on Northwest grain Chicago and Peoria are equalized, and it does not extend down to St. Louis; and on Southwest all three of them are equalized, Chicago, Peoria, and St. Louis?

A. That is correct.

Q. Now, when you get east of those gateways, or when you get within the limits of Official territory for your points of origin there, is there two applications of rates, one set of rates that would enable a man to go from that Official territory origin to a gateway such as Chicago, then reship to his point of destination; and another set of rates which would enable him to use his through rate from his point of origin to destination? Didn't he make either kind of a shipment?

A. I do not believe I understand that, Mr. Cole; you are coming from Official territory?

Q. Yes; say Morris, Illinois to Cleveland, Ohio; is there

a through rail rate from Morris, Illinois to Cleveland, Ohio, through one-factor rate from Morris, Illinois?

A. No.

Exam. Taylor: All-rail, you are talking about?

Mr. Cole: All-rail.

The Witness: Right.

By Mr. Cole:

Q. Is there a through one-factor rate from Kankakee, [fol. 2079] Illinois, to Cleveland, Ohio?

A. There is.

Q. Now, suppose a man at Kankakee, Illinois, wants to ship a carload of grain to Cleveland, Ohio: that man could ship it straight from Kankakee to Cleveland, Ohio, could he not, and use a through rate?

A. Certainly.

Q. That man at Kankakee, Illinois, could also ship his grain to Chicago, could he not?

A. And on to Cleveland on the through rate?

Q. Yes.

A. I don't believe he could.

Q. Do you know of any points down in the Illinois territory within Official territory having through rates, say to Trunk Line territory, from which origins the man could ship his grain direct and use the through rate, and from which origins a man could also ship his grain to Chicago, transit it there, and reship it on the balance of the through rate; so that in either event he would pay the same amount of transportation charges, rail?

A. Yes, under transit.

Q. Now, when you said that Illinois origins were not equalized through the different destinations, didn't you refer wholly to grain which originated within Official territory?

A. No; if we are speaking of equalization, Chicago [fol. 2080] equalizing with Peoria.

Q. That is all I am speaking about; that is right.

A. You have got a different situation: now, taking the separately established factors to Peoria, for instance, from say, Chillicothe, Illinois, the factor into Peoria, I think, from Mr. Tannehill's exhibits, or Mr. Wheat's, is 7½ cents. The rate on to New York is 28 cents from Peoria. That

would give 35½ cents on the separately established factors. The factors via Chicago are 12-26, 38 cents.

Q. And what origin point were you using?

A. Chillicothe, Illinois.

Q. And is that origin point within Official territory?

A. I believe it is.

Q. Then, again, Mr. Schimmel, every time you referred to there not being equalization, were you referring to origins within Official territory?

Mr. Belnap: Your question is Illinois, in Official territory?

Mr. Cole: Oh, no; he said that at certain places this equalization did not work out.

Mr. Belnap: He said from Illinois.

The Witness: I said from Illinois; Official territory, we are going east of us here.

Mr. Cole: That answer will straighten it out; thank you. Grain originating in Illinois and moving to Chicago, when [fol. 2081] it moves east of Chicago uses the reshipping rates, I believe you said on your direct testimony, didn't you,—uses the column of rates headed "Reshipping"?

The Witness: Yes; there may be a lower through rate.

By Mr. Cole:

Q. But if there isn't any transit balance, then the Illinois grain uses the column headed "Reshipping" on exhibit 68, that kind of rate, does it not?

A. Yes.

Q. Now, are you familiar with the fact that the factors shown under the first two columns; that is, trans-Mississippi and the Northwest—we are back on 68 now—are you familiar with the fact that the factors on those columns were definitely prescribed by the Commission as equalizing factors, were they not?

A. What columns was that?

Mr. Belnap: Trans-Mississippi and the Northwest, Mr. Schimmel.

The Witness: Yes, the Northwest,—that is an equalized rate; that is prescribed.

By Exam. Taylor:

Q. In other words, it takes into consideration a lower rate from the Northwest into Chicago than from Trans-Mississippi territory into Chicago?

Mr. Cole: Correct. Now, when water grain along the Illinois waterway gets up to Chicago, that water grain has in the past, and at present is being accorded not the level of rates under that reshipping column, but the level of [fol. 2082] rates under the Northwest column; is it not?

The Witness: That is correct.

Exam. Taylor: To Central Freight Association territory?

Mr. Cole: To Central Freight Association territory. In your exhibit No. 68 there are shown first quite a number of rules covering the application of reshipping or proportional rates on traffic originating in trans-Mississippi River territory, beginning with Note 25?

Exam. Taylor: On what page?

Mr. Cole: On page 4 of exhibit 68. Do you see that?

The Witness: Yes, sir; you are talking now about Peoria.

By Mr. Cole:

Q. Well, I am talking about all of these rules that are headed Application of Reshipping or Proportional rates on traffic originating in trans-Mississippi territory.

A. Well, we ought to be specific: this particular note covers Peoria, Mr. Cole. I don't know if you want to talk about Peoria, why, O. K.

Q. What I am getting at is this: now, turn over to the—what page is the Chicago note?

A. Going to Trunk Line, or CFA?

Q. Central Freight Association, from trans-Mississippi.

A. Chicago and Peoria are in the same item; it is present Note No. 20, on page 12.

Mr. Belnap: Page 12; this is the Central Freight Association?

[fol. 2083] The Witness: Yes.

By Mr. Cole:

Q. Now, Note 20 on this page, then, covers the application of reshipping or proportional rates on traffic originating in trans-Mississippi River territory?

Exam. Taylor: Destined to Trunk Line?

Mr. Cole: To Central Freight Association. Now, where is the corresponding rule covering the application of the rates on traffic originating in Northwest territory?

The Witness: The present note?

By Mr. Cole:

Q. Yes; that is Note 40, on the next page, isn't it?
A. That is Note 40 on page 13.

By Exam. Taylor:

Q. That is from Chicago to Central Freight Association?
A. Yes, sir.

By Mr. Cole:

Q. Covering the traffic that originates in the trans-Mississippi River territory, any reference of any kind pertaining to ex-water grain, whether it is river, lake, or any other kind of ex-water?

A. Yes; it says here proportional rates applicable on traffic reaching the reshipping point via rail or water transportation lines.

By Exam. Taylor:

Q. Where are you reading from now, Mr. Witness?
A. Page 12, the third line.

[fol. 2084] By Mr. Cole:

Q. So that if you originate on barge line the shipment of grain in trans-Mississippi River territory, carry that shipment in the barge to Chicago, and want to ship that grain outside of Chicago, beyond Chicago to destinations in Central Freight Association territory, would this Note 20 enable you to use the level of the ex-trans-Mississippi rates on that grain?

A. No, not according to the interpretation placed on the tariff.

Q. Mr. Schimmel, in your understanding of the difference between the two notes, why is it necessary on ex-barge traffic to use the ex-Northwest proportional, even if the grain actually originates at Kansas City, Missouri?

Mr. Belnap: I am perfectly happy to have Mr. Schimmel go along on this subject; I would like to understand whether it is your view that this is the type of testimony which is appropriate as to the true application of the rates that are here in issue.

Exam. Taylor: I would like you to tell me why it is not?

Mr. Belnap: I think it is; I am trying to get that point; if it is, it is swell with me, because I want to put some on, some railroad people.

Exam. Taylor: I think it is proper.

Mr. Cole: Now, you understand I am trying to find out what he actually does.

[fol. 2085] Mr. Belnap: He has told you he applies Note 40; now, you want to know why.

Mr. Cole: Yes, in his mind why that is so.

Mr. Brown: You mean why Note 40 reads as it does?

Mr. Cole: No, sir.

The Witness: You mean why they apply Note 40, instead of Note 20?

By Mr. Cole:

Q. Yes, instead of Note 20.

A. That is what I have been trying to find out; I would like to know.

Q. Will you look, please, at your exhibit No. 71; will you please note that under the first rate column headed "Present Barge Rail Rate to Baltimore, Domestic", it gives a figure of 26.75; over under the barge-lake-rail column it gives a rate of 28.51 cents; notice those two lines?

A. Yes.

Q. Is that correct, Mr. Schimmel, in showing that at present may move from Morris via barge to Chicago, thence all-rail from Chicago to Baltimore at actually a lower charge than had that same grain moved barge to Chicago, lake from Chicago to Buffalo, and thence rail to Baltimore?

A. Yes, that is true; for the reason that the lake rate from Chicago to Buffalo, the figure used, of 6.25 cents is abnormally high. Otherwise, it would be, the barge-lake-rail would be very close to the present barge-rail rate; that [fol. 2086] is, under normal lake conditions, lake rates.

Q. Now, if you will look at the bottom of exhibit 71, the export situation as I understand it, it shows that the barge handling to Chicago and the rail movement from Chicago to all of these points of destination, under the application of these proportional rates, to the barge business, it would actually result today in lower charges than if the grain would move all-water, barge to Chicago, lake from Chicago to Buffalo, and then rail from Buffalo on to destination; is that correct?

A. That is also in that——

Q. Mr. Schimmel, in your experience as a rate expert, would you say that it was usual or unusual to find a rate situation where a shorter water haul and a longer rail haul actually resulted in substantially lower charges than a long water haul connected up with a short rail haul?

The Witness: Read that question, please.

(Question read.)

A. Usually the long water haul is the cheaper.

Q. On your exhibit 67, Mr. Schimmel, on the first page, the second group of figures where it says "via rail, lake-local, received inbound," and then outside of that, on the other side, "Disposition outbound,"——

A. Wait a minute; you said exhibit 67.

Q. Exhibit 77.

A. Exhibit 77?

[fol. 2087] Q. Yes, sir;—it shows that there was 1,364,960 pounds of that canceled for rail movement beyond Chicago; would not that rail movement beyond Chicago have to be corrected back, so that it would pay the Illinois proportional level of rates into Chicago, rather than the lake-local?

A. No.

Q. There is possible rail application beyond Chicago on the grain that gets into Chicago on the lake local?

A. Yes, sir.

Q. Where is that, what destination territory?

A. Well, over to Battle Creek, Mr. Cole. We bill on the balance of the rate we pay in, 9 cents; the through rate is 19 cents, we go out for 10 cents. So we do not pay any more, we do not change that outbound rate—that is what you inquired about?

Q. Oh, then, on the outbound movement you check back to the point of origin and find that that grain is entitled to a through rate from the point of origin?

A. Yes.

Q. In which event it is a transit operation at Chicago, and you apply only the transit balance; is that right?

A. Yes, that is right.

Q. Now, this rail application outbound, then, on the arrivals on the lake local, would they represent such hand-

ling where they rebilled it from Chicago on the balance of the through rate from the point of origin?

[fol. 2088] A. That is not quite clear to me, just what you are driving at, Mr. Cole.

Mr. Belnap: Do you want to know if it is like this Battle Creek situation?

Mr. Cole: Yes. Is this disposition shown via lake local, is that disposition like that Battle Creek situation?

The Witness: Yes, it is.

By Mr. Cole:

Q. Now we get down to the third column, which shows the arrivals via barge, and the disposition of that barge arrived grain; and it shows some 90 per cent of the disposition to be via lake. In your experience, and that which you have had under your experience, what would you say would be the fair average of the disposition of the water-arrived grain at Chicago, the river-arrived grain, as between outbound via rail and outbound via lake?

A. Now we are talking about the same period during the year, is that right?

Q. Oh, no; I said in your experience, now, since the water grain has been coming up to Chicago, what would be your experience as to the percentage that went out of Chicago via rail and the percentage that went out of Chicago lake,—your stuff that you billed; you are traffic manager.

A. I would have to make an awful guess.

Q. Well, can you get reasonably close enough so that we can put some reliance on it?

[fol. 2089] Mr. Belnap: May I say something off the record?

Mr. Cole: Surely.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Back on the record.

By Mr. Cole:

Q. Mr. Schimmel, of the total traffic that moved from origins along the Illinois River, by the river to Chicago, did you hear the testimony of the previous witness who tes-

tified that of the outgoing business 70 per cent was canceled for outbound movement over the lakes?

A. I did, yes.

Q. In your experience, would it be safe to say that at least that was a conservative figure?

A. No.

Q. You would not say so; what would, in your experience, be the destinations of the grain that was canceled for rail billing?

A. Ex-barge billing?

Q. Yes.

A. And rail destinations?

Q. Yes; what would be the destination territory to which you would ship ex-barge billing via rail?

A. Well, it might be almost any point. It would depend on business, Central Freight Association, Trunk Line.

Q. And what, in your mind, would be the determining factor which would control your selection of the ex-barge bill-
[fol. 2090] ing for such a rail shipment to a destination like that?

Mr. Belnap: Mr. Examiner, I have not asked this witness about merchandising questions. If you are talking about how to get at it in the past, that is one question; if you are talking about merchandising of grain, then I object. I did not go into it on direct.

Mr. Cole: I am trying to get from him—he is a traffic man; he is a rate expert.

Mr. Belnap: He cancels the billing.

Mr Cole: He cancels the billing; and I am simply asking him what factor was it that he went to determine whether he was going to cancel ex-lake billing or ex-rail billing on a shipment to any destination.

The Witness: That is so involved, Mr. Cole, that it would be almost impossible to answer that. You have no particular point, and my file is full of tonnage and I wouldn't know unless I sat down and figured out what billing I want to apply.

By Mr. Cole:

Q. Well, if you have a car going from Chicago to Cleveland, and you had a car in Chicago, or if you had a transit bill in Chicago that had come in from a point that had a through rate, from some point in Illinois to Cleveland, you

would probably use that bill in order to get the cheapest balance out of Chicago to Cleveland, wouldn't you?

A. Ordinarily, yes.

[fol. 2091] Q. And could we not take it as a general proposition that when you make a shipment from Chicago to any destination, whether it be in Trunk Line territory or Central Freight Association territory, you will select from your office a transit credit that enables you to go out on the cheapest balance, wouldn't you?

A. Not always.

Q. When you don't, are you preserving that transit credit because it could be more valuable in some other disposition?

A. Possibly so.

Q. In your introduction, and speaking of this exhibit 79 that was introduced only for the purpose of illustrating the workings of your getting grain in and shipping it out, was it not to connect up the free transit arrangement?

A. Exhibit 79 was to furnish an exact copy of the John I. Hay Company form of bill of lading.

Q. Do you know how long they have used this particular form of bill of lading, with all of its terms, contracts, and conditions?

A. To my knowledge, over a year.

Mr. Belnap: Is that the uniform bill of lading, Mr. Schimmel?

The Witness: Yes, sir.

By Mr. Belnap:

Q. The one that rail carriers use?

A. I think the identical terms that are on a rail bill of [fols. 2092-2094] lading are on that bill of lading.

Mr. Cole: I was just noticing some of the terms that when we read them with the few at the head of the bill of lading and we have a water carrier, it does present some peculiar problems. That is all I have.

Mr. Belnap: The Federal Barge Line use the uniform bill of lading on their shipments.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: I think we will adjourn until 9:00 o'clock tomorrow morning at this time. It is 5:00 o'clock.

(At 5:00 o'clock p. m., an adjournment was taken to 9:00 o'clock a. m., Wednesday, January 24, 1940.)

[fol. 2095] Morrison Hotel, Chicago, Illinois,
Wednesday, January 24, 1940.

Met, pursuant to adjournment at 9:00 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances:

As heretofore noted.

Proceedings

Exam. Taylor: All right; gentlemen. Are you ready to proceed? Mr. Cole, have you finished with your cross-examination?

Mr. Cole: Yes, sir.

Exam. Taylor: Mr. Enoch.

J. J. Schimmel, resumed:

Cross-examination (continued).

By Mr. Enoch:

Q. Mr. Schimmel, when did you go with Continental Grain Company?

A. March 1, 1938.

Q. March 1, 1938?

A. Yes.

Q. Prior to that time you were with the Farmers' National Grain Corporation?

A. That is right.

[fol. 2096] Q. And when you were the Farmers' National you had a good deal of experience with this barge grain, didn't you?

A. I did.

Shipping to Memphis and points south, but never much to Chicago?

A. Well, there were movements into Chicago.

Q. Was the John I. Hay Company using a bill of lading such as exhibit 79 when you first went with the Continental Grain Company?

A. My recollection is, Mr. Enoch, that all the shipments we have ever had over the John I. Hay were on that form of uniform bill of lading, such as exhibit 79.

Q. Back as far as 1938?

A. I don't remember the date of our first shipment by water, with Continental. I do not recall about that. But that is the only lading that I can remember that Hay has ever used.

Q. Weren't there times when no bill of lading was issued?

A. No; there was always a bill of lading issued.

Q. Didn't the Continental Grain Company have a contract arrangement with John I. Hay at one time?

A. No written contract.

Q. Did they have an oral conract?

A. Yes; he agreed to haul for us whatever we might have to offer.

Q. And you agreed upon a rate for that service?

[fol. 2097] A. Yes, sir.

Q. Is that oral agreement in effect now?

A. Yes.

Q. Did that run for a month, or six months, or a year, or any particular period of time?

A. Well, as long as the business was satisfactory to Hay and to us, why, it would continue on.

Q. Do you have any similar agreement with any other barge operator?

A. We are trying to operate with Mechling now. As a matter of fact, there has been a few shipments came in over the Mechling Line before the river froze up; and we expect to use it—we expect to use Hay with one barge and Mechling with other barges.

Q. How much corn, if there is no objection to your stating it from a business standpoint, did you get by barge in 1939? The whole year?

Q. Yes.

A. I don't have those figures for the whole year.

Q. With respect to 1939, didn't other barge lines than the John I. Hay Company handle the bulk of your receipts?

A. Other than John I. Hay? No, Hay handled a large portion of our business.

Q. I am talking about corn now.

A. Corn, yes.

[fol. 2098] Q. As I understand your exhibit 77, you received via barge during the period May 1, 1939, to January 14, 1940, some 235,000,000 pounds?

A. Yes.

Q. Do you think that John I. Hay Company brought in the bulk of that?

A. Oh, yes. Now, if you are talking about the Morris grain, that we purchase down there,—I am talking about the elevators that we operate, not the grain that we buy from the Cooperative Allied or Lowell-Hoit & Company; you asked me if we bid, and I was talking about our own facilities.

Q. Well, I am talking about the grain that comes to you by barge at Chicago, regardless of whom you buy it from.

A. Well, then, the situation as a whole, Mechling hauled in a substantial quantity of it.

Q. In 1939?

A. Yes.

Q. And any other company?

A. John I. Hay.

Q. I mean besides Mechling and John I. Hay?

A. That is all, I think. There was another party, too, that came in; that was the Lawrence Transportation Company, that brought in a barge or two. And another barge from—I can't think of the name of this operator; I believe it is in the record some place, but there was another barge [fol. 2099] came in by another company.

Q. Did you have the same kind of an oral agreement with Lawrence Transportation Company that you had in respect to John I. Hay?

A. No; the W. W. Dewey Company engaged the Lawrence Transportation Company to handle those barges.

Q. Other than this one barge, you never received any corn brought here by the lawrence Transportation Company?

A. There was more than one barge, Mr. Enoch; it was a few barges; let us put it that way.

Q. Has the Continental Grain Company any interest, financially, direct or indirect, in the John I. Hay Company?

A. No, sir.

Q. Did they ever have?

A. Never had.

Q. In any other barge line?

A. No, sir.

Q. Now or in the past?

A. No, sir.

Q. Does the Continental Grain Company or any of its officers hold any stock in any of these barge lines?

A. No, sir.

Q. Has it in the past?

A. No, sir.

Q. Did you say on your direct examination that the document which you surrenderd to the Eastern lines in order to [fol.2100] engage the outbound movement of your corn on a proportional rate, which is brought into Chicago by Mechling Barge Line, was made out by Mechling or in your office?

A. Neither; the freight bill is made out by Lowell-Hoit & Company; and then I further amended that, but some of these bills are made out just recently, since this proceeding started by Mechling, at Joliet.

By Exam. Taylor:

Q. That is a change in the practice, isn't it, of the Mechling Company?

A. Yes; the business of the co-operative Allied is handled—Lowell-Hoit & Company make up the freight bills. Where we engage Mechling for our own business he makes them up in his office at Joliet.

Q. I understood you to say that since this case started Mechling people started to make out the bills, instead of Lowell-Hoit?

A. No, correct that: on our own business.

By Mr. Enoch:

Q. What do you mean by your own business?

A. Grain shipped for the Continental.

By Exam. Taylor:

Q. From your own elevators?

A. Yes, sir. On those barges, the Mechling Barge Line at Joliet make up the freight bill and mail it in to us.

Q. Make it up at Joliet?

A. Joliet.

Mr. Belnap: Has that always been true, as to Mechling [fol. 2101] handling grain shipped by Continental?

A. Yes.

Exam. Taylor: All right; go on from that. You had not finished, had you?

The Witness (Continuing): Well, I was going to say that then, on the other hand, on the business handled—put it this way: the grain purchased from the Co-operative Allied, the freight bills are made up in Chicago for the account of Mechling by Lowell-Hoit & Company.

Mr. Belnap: I think that is confusing in the record, Mr. Examiner, because before he said it was made up for the account of Allied Barge Corporation by Lowell-Hoit & Company. I only interrupt because I want the record to be clear. Are they made up for the Allied Barge Corporation?

The Witness: Made up for the Allied Barge Corporation. I was mistaken on that. That is what I said yesterday, and I was a little confused on it.

Exam. Taylor: You just made a statement to Mr. Enoch that since this case was begun up here, that some change had taken place; just a few questions back.

The Witness: Yes.

By Exam. Taylor:

Q. Explain that change?

A. That is in the instances where the Continental are shipping the grain from our own river elevators. In that case, and since that has occurred, A. L. Mechling make out [fol. 2102] their freight bills, and mail them direct to us.

Q. What was the previous practice?

A. The previous practice on this direct business, Mechling also mailed us the freight bill direct from Joliet.

Q. Well, I cannot see the change, then.

A. Well, Mr. Examiner, I was somewhat confused in this: that we recently have engaged Mechling to handle some of our river business. However, on the business that we did do with Mechling before, it was handled in the same manner as on these later shipments since the proceeding started.

Exam. Taylor: Mr. Reporter, go back to the question I referred to, in answer to Mr. Enoch.

(Questions and answers read by the reporter.)

Exam. Taylor: That is what I am talking about.

The Witness: That answer should be yes.

Mr. Belnap: Now, what about your first statement, Mr. Schimmel; you said just recently, since this proceeding started? Isn't the point, Mr. Examiner, whether he first stated it correctly, or now?

Exam. Taylor: I think so.
The Witness: May I restate it?
Mr. Belnap: May we go off the record?
Exam. Taylor: Off the record.

(Discussion outside of the record.)

The Witness: On grain purchased from the Coopera-
[fol. 2103] tive Allied Grain Dealers, the freight bill is made out by Lowell-Hoit & Company for account of the Allied Barge Corporation. On grain moving from Continental's own river facilities, transported by A. L. Mechling Barge Line, freight bills are rendered direct to Continental by the A. L. Mechling Barge Line. Does that take care of it?
Mr. Belnap: It does not state whether or not you correctly stated the fact when you told Mr. Enoch there had been a change; did you correctly state the fact then?
The Witness: I did not correctly state the fact.
Exam. Taylor: Proceed, Mr. Enoch.

By Mr. Enoch:

Q. I understand now this document which you register for the purpose of engaging this outbound proportional rate, so far as corn that is transported by the Mechling Barge Line is concerned, is made out in Mechling's office in Joliet?
A. The grain that we ship from our own facility is.
Q. That is the only grain that Mechling transports for you in his own behalf?
A. Yes.
Q. I understand that the expense bill is made out in Joliet?
A. Correct.

Mr. Day: You said expense bill?
Mr. Enoch: That is what I meant; the so-called expense bill, that is made out in Joliet.
The Witness: Yes.

[fol. 2104] By Mr. Enoch:

Q. Is that expense bill a receipt for the charges? That is what it is, isn't it?
A. Yes.

Q. And where do you pay the barge line operator, in Joliet or Chicago?

Exam. Taylor: You are still talking of his own grain, and not the Allied Co-operative grain?

Mr. Enoch: Yes, I am talking about grain transported by Mechling as the transporter.

The Witness: I think I explained that yesterday, that as soon as the out-turn weight is obtained by us we mark that weight on the freight bill, correct the freight bill to the out-turn weight, and mail Mechling a check together with that freight bill; and he in turn returns that to us marked paid, the freight bill. And then the procedure is to register the bill with the joint agency.

Q. Then it is really made out in your office?

A. No, sir.

Q. The form is filled out in your office, and you send it to Joliet for signature?

A. It is filled out by Mechling, and we send it back to Mechling, you might say, in practically the same manner that we do a rail freight bill.

Q. Is this the situation: the barge comes in and it is unloaded at South Chicago; and then they go back to Joliet [fol. 2105] and make out an expense bill, and then forward that to you at Chicago; and you put in the weights on that, and after you put them in you send it back to Mechling at Joliet again, and he signs it and then sends it to you for the second or third time?

A. No; when the barge leaves the Illinois River landing on the way into Chicago, I explained yesterday, we inform Mechling of the billed weight. He issues a bill of lading. Along with that bill of lading he sends the freight bill; the freight bill is on the basis of the billed weights. All the other information on that bill is billed in, with the exception of the out-turn weight, which is not known at that time, while the barge is on the way to South Chicago.

By Exam. Taylor:

Q. And the billed weight that you just mentioned is in bushels, rather than pounds?

A. On Mechling's bills, they are in pounds. Does that answer your question?

By Mr. Enoch:

Q. Well, the bill of lading is made out down at the origin point, isn't it?

A. Made out at Joliet.

Q. Where is it signed by Mechling?

A. At Joliet.

Q. Signed before the grain is loaded in the barge, or after?

A. After it is loaded in the barge.

Q. Moved out of the point of origin before you get a bill of lading?

[fol. 2106] A. Yes; that is possible, and it does occur. A barge may be finished loading at eight or nine o'clock at night, and it will be impossible to get a bill of lading made out until the following day, and it comes in the mail to us.

Q. Will you look at your exhibit 77; was that grain that is shown opposite lake locals the grain that was purchased by the Continental during the period shown at a discount?

Mr. Belnap: Mr. Examiner, I didn't ask this witness about the purchase of grain. I am going to have a witness on the stand who does purchase the grain; I think it would be well if you would ask these questions of him, Mr. Enoch.

Mr. Enoch: All right. Mr. Schimmel, you have had a good deal of experience in finding rates in tariffs; is there usually a section in the tariff entitled Application of Rates?

The Witness: There is.

By Mr. Enoch:

Q. Is it customary for that to contain provisions relating to the application of rates?

A. Yes, sir.

Q. Now, did you set out any of the provisions in the application of rate section in your exhibit 68?

A. I did.

Q. Where is that, Mr. Schimmel?

A. Pages 4 to 17, inclusive.

Q. Those are principally notes, are they not, to which reference is made in the provisions in the application of [fol. 2107] rate section?

A. Yes, they are notes, and cover the application of rates.

Q. But you do not cite the principal portion of that section, do you, of the tariff, other than the notes?

A. No, just the notes is all that I have shown here.

Q. I understand that your reliance in part in support of the application of proportional rates to the Eastern Trunk Line territory is on Note 20 on page 4 of exhibit 68? Is that right, Mr. Schimmel?

A. Yes, that is correct.

Q. Now, is there any other note on that business from Chicago to Trunk Line territory upon which you rely, that is set out here on exhibit 68?

A. No, that is the only note that——

Q. And you rely upon Note 40, page 13, of the same exhibit, insofar as the business to Central Freight Association territory is concerned?

A. That is correct.

Q. Any other note in connection with that traffic to Central Freight Association territory?

A. Are you referring to just the Northwest—are you referring to anything other than the Northwest application?

Q. Yes, what I refer to is——

A. There are other notes, Mr. Enoch, that are referred to, covering reshipping rates: Note 45; and trans-Mis- [fol. 2108] sissippi is covered by Notes 20 and 50 in No. 535. There are various notes,—and Note 40 explains the Northwest application.

Mr. Brown: Mr. Enoch, do all your questions now relate to barge grain to be shipped out?

Mr. Enoch: Yes. Are there any other notes than 40 on which you rely to Central Freight Association territory, that are set out here in exhibit 68?

The Witness: Yes, there is another.

By Mr. Enoch:

Q. What is that?

A. Note——

Exam. Taylor: Give us the page number.

Mr. Belnap: Mr. Enoch's question goes to the exhibit only; he said, are there any other notes in this exhibit on which you rely?

The Witness: No.

By Mr. Enoch:

Q. Now, do you consider that this barge grain that you receive and put into your elevator, and later ship out, is transited by you?

Mr. Belnap: I object to that, Mr. Examiner. That is a question of legal conclusion.

Mr. Enoch: All right; do you rely upon any provisions of the transit tariff?

Mr. Belnap: For the application of rates, you are talking about now, are you not?

Mr. Enoch: No, I am talking about his contention here. [fol. 2109] Mr. Belnap: Which goes to the application of rates?

Mr. Enoch: Yes, practically speaking, that is right.

Mr. Belnap: I think the question upon what parties rely should properly be addressed to counsel.

Mr. Enoch: All right; I will ask you the question.

Mr. Day: That is what we have been contending right along, as to tariff applications.

Mr. Belnap: I did not talk about tariff applications; I am tallking about questions as to what parties rely on. We rely for the application of the rates, purely on the notes contained on exhibit 68; and I think in elaboration of that Mr. Schimmel read from Jones' ICC 3300, Item 5, on which we also rely.

Mr. Enoch: I do not want to press you on this; but you would not take the position, would you, that insofar as this business is concerned we could throw the transit tariff out of the window?

Mr. Belnap: You have got to police the application of rates so as to determine that you actually have the amount of business that the rate application bears upon; that that in itself does not bear upon the application of the rates. Certain mechanical things you have to do; they are provided in the transit tariff. In order to have a shipment to get a rate on——

Exam. Taylor: Let me see if I get you straight; it is [fol. 2110] your position that so far as the rate tariff covers the rules and regulations covering this traffic, that should be applied. If it also contains policing rules which are also carried in the transit tariff, that the policing rules or

similiar rules carried in the rate tariff supersede similar rules carried in the transit tariff; is that your position?

Mr. Belnap: I do not understand there are any policing rules in the rate tariff.

Exam. Taylor: So you have got to go to the transit tariff to get the policing rules?

Mr. Belnap: That is right.

Mr. Enoch: What I have in mind, this grain comes in via barge and is put in an elevator. That inbound movement is complete, and the shipper does not have to do anything more with that grain, so far as transporting is concerned. If he uses it for consumption in Chicago, that is all right. If it goes in a car after a month, or six months in the elevator, I would like to know whether the protestants here place any reliance upon the transit tariff, in the way of relying upon that tariff so as to be able to say that although that grain was stopped for a month or six months in the elevator, nevertheless it really has been in transit all of the time.

Mr. Belnap: Mr. Examiner, as I view it, on either ex-lake or ex-barge grain rates applicable outbound are not applied in the sense of having a through shipment tempo- [fol. 2111] rarily interrupted at a transit point. Because the inbound movement is not subject to the Commission's regulation, and there could not be any such thing on either ex-barge or ex-river traffic on the fiction of a continuous movement temporarily interrupted.

Exam. Taylor: I just have one more question, then: what is the purpose of the notation at the bottom of the shipping instructions to the East?

Mr. Belnap: And on the ex-lake too.

Exam. Taylor: The shipper must make a certificate at the bottom of this shipping instruction: "This is to certify that the billing listed under inbound is applicable to the commodity forwarded as provided in C. F. A. Tariff No. 413-K, ICC No. 3204."

Mr. Belnap: Well, as I understand, these houses into which go the ex-river grain may have rail grain, they may have truck grain in them. That is true of any transit, as to any commodities. And it is necessary for the carriers to police the application of their rates so as to be sure that the tonnage in the house, and shipped out from the house, will correspond from a record standpoint with what is

provided in this transit tariff. You have got to keep a record of what you bring in and what you ship out. You have got to balance it all of the time. If you dispose of anything locally, you have got to cancel that out. That balance [fol. 2112] is also contained, which was shown yesterday, in a sheet submitted to the inspection bureau for the cancellation of tonnage on ex-barge and lake shipments; it goes to the cancellation of tonnage.

Exam. Taylor: I did not want to argue this; I just wanted to get the application. The argument will be saved for the brief.

By Mr. Enoch:

Q. Do you put rail grain, barge grain, and truck grain in this Rock Island elevator that you are using out at South Chicago?

A. No truck grain.

Q. Do you handle any grain by trucks at all?

A. None whatever.

Q. Did you have any rail shipments to any particular Central Freight Association points to which you can direct our attention, back of which you surrendered barge billing?

Mr. Belnap: Do you want a specific destination?

Mr. Enoch: Yes.

Mr. Belnap: Do you have those we had yesterday?

The Witness: I do not have a Central Freight Association destination; I have a truck line destination.

Mr. Belnap: Is that the 205 cars you referred to? Do you refer to the 205 cars, Mr. Enoch?

Mr. Enoch: No, I was not referring to any particular cars. That is all I have.

Exam. Taylor: Did you withdraw the question and re- [fol. 2113] quest that you gave?

Mr. Enoch: Yes.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. Mr. Schimmel, you stated, as I recall, that where a barge handled 1500 tons he made a charge of 2.675 cents per hundred pounds?

A. I do not recall making that statement, Mr. Day.

Q. And that where there was a thousand tons, for instance, the charge was a cent higher; you do not recall that?

A. I do not recall the figure you gave, 2,675. That 1500 tons minimum that I spoke of was in connection with the Federal Barge Line rates, and applied on a 6½ cent rate from these Illinois River landings to Chicago; but that if it was 1,000 tons the rate would be one cent higher, or 7½ cents.

Q. What Illinois River landings were covered by those charges?

A. All the way down the river, to St. Louis.

Q. Anything between St. Louis and Joliet was to pay this charge that you stated, 2.675 cents?

A. Are you talking now about this Federal Barge rate, or the independent barge rate?

Q. You tell me first what you had reference to when you stated this figure of 2.675.

A. The 2.675 is the rate that we paid the John I. Hay Company for shipments made from our own elevator at LaSalle to Chicago.

Q. And that charge covers a barge load, as I understand it?

[fol. 2114] A. A barge load, whether there is 1500 or 1,000 tons. Well, generally speaking Hay's would run around forty to forty-five thousand bushels.

Mr. Belnap. What is that in tonnage?

The Witness: It would be about 1350 tons.

By Mr. Day:

Q. What I am getting at is whether this charge of his applies to any weight that you might ship?

A. Well, in my experience, we have never had anything lower than 36,000 bushels in those Hay barges.

Q. Then, as I understand it, there has never been anything except that one charge, as far as Hay is concerned?

A. Just the one charge.

Q. You never paid the higher charge, because there was a smaller quantity of grain in the barge?

A. No, sir.

Q. Is that actually the charge he makes, 2.675; or is it a per bushel charge?

A. It is a per bushel charge; and corn figured at 56 pounds per bushel makes 2.675 per hundred.

Q. It is just a matter of mathematics; anybody can figure that by knowing that corn is 56 pounds per bushel; but you can take my word, there is a difference.

A. It figures 1.498 cents per bushel.

Q. Well, it just comes to what I said; instead of 1.498, the charge is actually 1.5.

[fol. 2115] A. I couldn't get it any closer, without carrying out a lot of decimals.

Q. I know you can't; it is just a difference, as I stated originally, on account of the decimals; but when you are figuring 40,000 or 100,000 bushels it makes a little difference?

A. Very slight.

Q. Now, is Mechling's charge the same as Hay's, between the same points?

A. No.

Q. Is is higher or lower?

A. Slightly higher.

Q. From LaSalle, what is it?

A. 2¾ cents per hundred.

Q. He makes a per hundred charge, rather than a per bushel charge, does he?

A. Correct. Mechling names all of his rates in cents per hundred pounds.

Q. Does he make any different charge for lower quantities?

A. He never has to us.

Q. On your exhibit 67 you show that the barge mileage to Chicago is 57.7 miles; that is the first figure in the upper lefthand corner of the page. Do you see it there?

A. Yes, I see it.

Q. And in connection with these barge mileages you say in Note A, "Barge mileages measure from origin point to [fol. 2116] mouth of Illinois River, Michigan Avenue bridge." What do you mean by that?

A. Well, that is the measurement that the United States department of engineers tabulates for that distance. It is known as the U. S. light list. I understand, however,—I show that as of 1937—that there has been a revision in that light list.

Q. I am getting at Note-A first; I will get to the mileage later. The mouth of the Illinois River is around Joliet, is it not?

A. It shows it in this government book, the mouth of the Illinois river at the Michigan Avenue bridge.

Q. Michigan Avenue bridge in Joliet?

A. No.

Q. Where?

A. Chicago.

Q. You know the Illinois River does not run anywhere near Chicago, don't you?

A. The North Branch,——

Q. That is the Chicago River here?

A. I am not an expert on the technical parts of the river.

Q. The Chicago River flows into the Drainage Canal; the Drainage Canal is practically on the old location of the DesPlaines River as far as Joliet, and from there the Canal empties into the Illinois River; isn't that what it is?

A. I don't know, Mr. Day.

[fol. 2117] Q. Have you this pamphlet or document called the Official light list of the United States Department of Commerce with you?

A. I have not.

Q. And it reads from the origin point to the mouth of the Illinois River, Michigan Avenue bridge, does it?

A. I got these milages, Mr. Day, from the Federal Barge Line, who have this light list in their Office.

Q. Your grain goes to the Rock Island elevator; I think you said, the Rock Island Terminal elevator?

A. That is right.

By Exam. Taylor:

Q. In South Chicago?

By Mr. Day:

Q. South Chicago?

A. Right.

Q. On the Little Calumet River?

A. The Calumet River.

Q. It is the Little Calumet? The Grand Calumet flows over into Indiana, doesn't it?

A. All right; I will take your word for it.

Q. And these elevators are located close to Lake Michigan at South Chicago?

A. Our elevator is. Some of them are quite a distance away.

Q. Now, then, you say that this mileage you gave has

been revised since 1937; what is the figure shown by this revision to Michigan Avenue bridge as of today?

[fol. 2118] A. I don't know.

Q. Isn't it 63.7 miles?

A. I don't know.

Q. If that is the figure shown in the Port Hand Book, Sixth Edition of 1939, page 18, would you say that 63.7 was the correct mileage?

A. If it is shown in there, certainly.

Q. You heard Mr. Mechling, who operates barges to your South Chicago elevator, say that the distance was 68 miles to those elevators around South Chicago?

A. I did not hear Mr. Mechling's testimony.

Q. You have no reason to doubt the correctness of the figure he gave, have you?

Mr. Belnap: We will be very glad to accept it, Mr. Day.

The Witness: No, if that mileage is 68, and he said it is, I will accept it.

Mr. Belnap: I would accept it; it is rather immaterial.

Mr. Day: I don't know how material it is going to be; but we want to get it as nearly correct as we can now.

Mr. Belnap: I will be delighted to have it, sir.

By Mr. Day:

Q. The river has been frozen for some weeks now, hasn't it?

A. Yes.

Q. And the barge lines are not operating from LaSalle to Chicago, for instance?

[fol. 2119] A. Not from LaSalle.

Q. And the railroads are, I take it.

A. I guess they are.

Q. So when you say that the time made by the barge is less than the rail, you mean that in fair weather the time is better?

A. That is when the barges are operating.

Q. You show a through rail rate, on your exhibit 69, from Morris, Illinois, to Detroit, Michigan of 24½ cents; and elsewhere in your testimony you had stated that there was a rate of 22 cents to Detroit?

A. I beg your pardon, I didn't state that, Mr. Day.

Q. I don't say that you said it applied from Morris; but I was wondering if that 22-cent rate would apply from Morris?

A. No.

Q. What territory would that apply from?

A. Well, it applies from Peoria, Lacon; and there is any number of Alton and Illinois Central points.

Q. In any event Morris is intermediate from those points to Detroit?

A. Not necessarily, no.

Q. From Peoria?

A. They do not carry an intermediate clause from the origin points in that tariff.

Q. They have Fourth Section relief, haven't they?

[fol. 2120] A. I know this: that we are unable to bill out at a balance of the through rate to Detroit.

Q. The thing is, Morris is a local point on the Rock Island; and the Rock Island is the short line between Peoria and Chicago?

A. Yes, but there is a restriction in this tariff where the rates will not apply via the Rock Island.

Q. I could not reconcile your 24½ cent rate with the previous figure?

A. Made on the combination.

Q. Do the ex-lake rates shown on your exhibit 70 carry an expiration date?

A. Are you speaking now, Mr. Day, of those in the upper block, or those in the lower block?

Q. I was speaking of those in the upper block.

A. I am not definitely sure whether they do carry an expiration date.

Q. Looking at your exhibit 71, isn't it a fact that there are also all-water routes from Morris to these eastern destinations, as well as the barge-lake-rail and the rail-lake-rail routes?

A. All-water routes?

Q. Yes.

A. Not into Baltimore.

Q. Aren't there?

A. You could reach Baltimore via all-water; but there is [fol. 2121] no business, to my recollection, being done on that.

Q. You mean the grain is not carried that way, although the water route is available if they want to use it?

A. Yes, the water is available.

Q. And what is the all-water charge from Morris to New York that would correspond with the charges shown on your exhibit 71?

A. The all-water to New York?

Q. Yes.

A. I do not have an all-water——

Mr. Belnap: He asked you what it was, Mr. Schimmel?

By Mr. Day:

Q. Do you know what it is?

A. No, I do not.

Q. Do you use all-water routes from Morris or Chicago to New York?

A. No; we ordinarily will run our all-water movements through Montreal, Sorel, or Three Rivers.

Q. That is your export business?

A. It might be that our New York office might do some of that business from Buffalo, but I wouldn't know about that.

Q. But your export business is ordinarily handled through Montreal or Three Rivers?

A. Montreal, Sorel, or Three Rivers.

By Exam. Taylor:

Q. All on the St. Lawrence?

A. All on the St. Lawrence.

By Mr. Day:

Q. Do you use St. Lawrence?

[fol. 2122] A. Yes, occasionally we use St. Lawrence.

By Exam. Taylor:

Q. But that way would be lake-rail?

A. Lake-rail.

By Mr. Day:

Q. Lake and Canadian rail?

A. Rail, Canadian rail.

Q. Your exhibit 77 indicates the extent to which you use lake routes out of Chicago, does it not?

A. Yes, lake and also rail.

Q. These lake charges that you show on your exhibit 71, and which you said have been in effect during the last half of 1939, actually jumped to that figure when the war started, did they not?

A. Well, it was about that time. I think it was a little bit before the war was commenced that the iron ore people began to engage this vessel space and it caused a tight situation, and the rate went up.

Q. To this abnormally high amount?

A. Yes.

Q. Before the iron ore situation became acute the vessel charge was around 1¾ cents to Buffalo, was it not?

A. You mean immediately preceding the war?

Q. Yes.

A. It seems to me it was a little bit more than that, Mr. Day; although I couldn't state definitely.

Q. You stated on your direct that the lake charge had [fol. 2123] been as low as 1½ cents?

A. Yes.

Q. In recent years?

A. Yes.

By Exam. Taylor:

Q. Is that per bushel?

A. 1½ cents per bushel.

By Mr. Day:

Q. On exhibit 72 you show a charge from Duluth to Buffalo, all-rail of 47½ cents; now that would not be the charge that was really assessed on any grain out of Duluth, would it?

A. It would apply to grain direct into Duluth; that is the local rate.

Q. Bearing in mind you are talking about corn;—you know that when you are in Duluth you are a long way from the corn belt?

A. No, as a matter of fact, corn in Duluth would be probably ex-rail.

Q. Yes, it would move in from some corn-producing section like Iowa?

A. Northern Iowa and Minnesota.

Q. And it would stay a rail rate into Duluth; and then

carrying with your exhibit, Duluth to Chicago would pay the proportional fixed by the Commission in the Western Grain case to move to Chicago?

A. By rail?

[fol. 2124] Q. By rail.

A. Yes.

Q. That is the way the figure that I was talking about applies, 47½ cents all-rail from Duluth?

Mr. Belnap: As I understand it, Mr. Day, on the traffic which came into Duluth via rail, the rate Duluth to Buffalo, instead of being 37½ cents would be 34½ cents.

Mr. Day: Is that the witness' statement?

The Witness: Yes, that would be 34½ cents.

By Mr. Day:

Q. How would you make that up?

A. 13 cents, the factor from Duluth to Chicago; 21½ cents Chicago to Buffalo.

Q. 21½ cents beyond Chicago if it originated in the Northwest territory?

A. That is right.

Q. But if it originated in trans-Mississippi River territory, and was shipped through Duluth, it would take 3 cents less than Chicago?

A. Correct.

Exam. Taylor: That is, shipped all-rail?

Mr. Day: Yes. The figure I have been talking about all the way through on exhibit 72 has been an all-rail figure. Now, the corn shown on your exhibit 73 shipped from Duluth amounted to 93,301 bushels, in 1937; is that right, domestic lakewise shipments?

[fol. 2125] The Witness: Yes.

Mr. Belnap: Just a minute, Mr. Schimmel; the gentleman asked you about bushels.

The Witness: That is tons; 93,301 tons. I covered that in my direct, giving the amount of corn bushels to the ton.

By Mr. Day:

Q. And I think you said that went to the head of the lakes, and you meant in the vicinity of Buffalo or the lower Lake Erie ports.

A. I believe I did say head of the lakes, and I should have said Lake Erie ports.

Exam. Taylor: The record is corrected on that to the foot of the lakes.

By Mr. Day:

Q. You don't know just where it did go, do you?

A. No; it is classified as lakewise shipments.

Q. Included in that figure might have been some tonnage that moved via rail east of Buffalo?

A. Yes, sir; there could possibly have been some.

Q. Or by water on the St. Lawrence River east of there?

A. Perhaps.

Exam. Taylor: It would be on the St. Lawrence River east of there, so far as it was to a point in the United States, because it says it is domestic; it is not export. There is a place for export just above the figure you just gave.

By Mr. Day:

Q. Do you classify the consignment, for instance, to [fol. 2126] Montreal or Quebec as export?

A. Yes, I would.

Q. That is the way it is listed in the government circulars, and in the trade?

A. Yes, sir.

Q. Anything going in to Canada is regarded as export?

A. No; no, there is corn that moves into Canada that is on a coastwise manifest.

Q. There is a distinction between the grain that is shipped to Europe or Africa or some other foreign country, and the grain that goes to Canada for consumption there?

A. Yes; but the grain that goes on a coastwise manifest may go to Europe; it may be finally exported.

Q. But the Examiner's question was, would a car of corn going to Montreal be export?

Mr. Belnap: May I say something off the record——

By Mr. Day:

Q. You know, and we all know that Canada is not a corn-growing country; and they use corn there the same as they

do anywhere else. Now, as I understand the Examiner's question, is a shipment to Canada for consumption in Canada, is that classed as export?

A. No, it would not be.

Q. But if it is going to be shipped from Montreal to Great Britain or South Africa, it would be classed as export; isn't that the situation?

[fol. 2127] A. Surely.

Mr. Belnap: My suggestion was going to be that I believe the report of the Army Chief Engineer defines the term; I thought it would be helpful to the record if Mr. Schimmel would obtain that document and state in the record what the definition is, how that is used.

By Mr. Day:

Q. Now, Mr. Schimmel, you also read into the record the lake shipments for 1938 from those other points; isn't it a fact that in 1938 there was an unusually large movement from Duluth via lake, of export corn.

A. Yes, there was a large movement of corn. I would call 27,000,000 bushels large.

Q. That was practically all for export, was it not?

A. I would say so.

Q. You wouldn't know about that?

A. Well, I could say that some of this corn would reach Buffalo and be reshipped into New England and Trunk Line territory; it would not all go for export.

Q. From Duluth; the figures are available, however, are they not, showing the export from Duluth?

A. Oh, yes.

Q. 1938 was not only a large export of corn from Duluth, but from Chicago, Milwaukee, and a number of other points in Central Freight Association tariffs?

A. Yes; 1938 was a fairly good export corn year.

[fol. 2128] Q. And 1939 was a year of large exports of corn, wasn't it?

A. Not so large.

Q. Smaller than 1938?

A. Yes; we are talking about the fiscal year now, now a crop year.

Q. I am talking about the calendar year.

A. The calendar year, yes, that is right.

By Exam. Taylor:

Q. And that is what your exhibit refers to, is the calendar year?

A. Yes, calendar year.

By Mr. Day:

Q. You, in giving these figures for 1938, said that they were taken from the records of the Duluth Grain Exchange, or some such trade body up there; would the figures of that exchange correspond with the figures—would the figures for 1934, 1935, 1936, and 1937 correspond with the figures shown on your exhibit 73? Have you ever matched them up to show that they are the same?

A. I do not believe I show on my exhibits for the years 1938 and 1939.

Q. I didn't mention those; I said are the cost figures for 1934, 1935, 1936 and 1937 the same as the figures you show on your exhibit 73? Off the record.

(Discussion outside of the record.)

A. Yes, approximately the same.

By Mr. Day:

Q. In your exhibit 76 you show rates from what we or- [fol. 2129] dinarily regard as coal-producing sections on the Chicago & Eastern Illinois, the Milwaukee, and the Illinois Central in Indiana.

A. That is right.

Q. Isn't it true those are the coal-producing sections in Indiana?

A. Well, I don't know about the coal, Mr. Day; I know there are substantial quantities of grain that move. Some of those points I recognize as being quite large shippers.

Q. I notice the points are not listed in any kind of geographical order; is this the way they appear in the tariff?

A. There were more stations than I had shown in this exhibit, and I took up some representative points that I recognized I had received grain from, and showed them on the exhibit. There isn't any other stations that have the same applications of rates to the lake proportional, out on the lake.

Q. They would not apply, for instance, at Terre Haute?

A. I don't believe that Terre Haute was included in there.

Q. Does the Chicago & Eastern Illinois tariff, for instance, carry an intermediate clause?

A. Yes; and I am quite sure they have Fourth Section relief.

Q. Well, they wouldn't need Fourth Section relief if they had an intermediate clause, would they?

A. I know that the rates are not applicable. I cannot answer that question; but they are not applicable. From [fol. 2130] these intermediate stations, I know that the rates do not apply.

Q. They would not be applicable from such actual grain-producing sections, corn-producing sections as that around Hoopeston, or Milford, or Watseka?

A. No, they would not apply.

Q. They only apply from that territory south of Terre Haute?

A. That is the general description.

Q. South of Terre Haute on the Milwaukee—on your exhibit 77, could you tell us how many of the 501 cars via rail shown on the first sheet moved out at what you call the lake local rates?

A. I do not follow you, Mr. Day; that is under the even rate, or the Illinois proportional, the 500 cars.

Q. So none of that would be——

A. No.

Q. The lake local would be shown in the next——

A. The next block.

Q. And where you show 2210 cars, via barge, you meant that as an equivalent, and not that it was actually carload traffic?

A. No, I show the tonnage there; 187 million and some odd pounds; and I used 84,638 pounds per car to arrive at the amount of cars equivalent. That was the figure that Mr. Tannehill used.

Q. Have you any idea where these 501 cars via rail, be-[fol. 2131] ing the even rate or Illinois proportional rate, actually originate?

A. Yes; quite a number of them originated on the Illinois Central, around Beason, Skelton, Havana; and quite a number of them on the Chicago & Eastern Illinois in Indiana.

Q. Didn't any of them originate on the main line of the Illinois Central running south from Chicago?

A. Perhaps.

Q. You don't know about that?

A. Oh, there would naturally be a few cars in there; maybe quite a number.

Q. That section served by the Illinois Central is one of the finest corn-growing sections in Illinois, is it?

A. Well, I don't know; it is pretty good territory out here along the Illinois river.

Q. And this Illinois Central territory is not so good for corn?

A. Oh, it is good producing.

Q. That is all I asked you, if it was not one of the finest.

A. I don't know that it is one of the finest.

Q. You don't know?

A. There is other territory that has massive production also.

Q. There is a lot of corn grown in Champaign County?

A. There is a lot of corn grown in LaSalle County.

Q. You have seen better corn there, have you, along the river valley that is overflowed a good deal of the year, have you?

A. I have not seen any overflow down there.

[fol. 2132] Q. You have not? You have been down in that country, have you?

A. Yes, I have.

Q. I have too; and I have seen it under water a lot of times. If the figures show that the Illinois Central is the largest corn-producing railroad in Illinois, would you still stand with your answer that it did not amount to so much as a corn producer?

A. Well, we would have to compare territory to consider that.

Q. You would have to compare territory?

A. Yes, the farming territory, Mr. Day. I pick out a little spot, and it is a natural thing that along these river valleys is where your massive production of corn is. Farther away from the rivers, sure, there can be good production.

Q. I suggest to you you look at McLean County production, compared with the rest of the state, and see if there is

any that has a larger production; that is the same distance from the river, is it?

A. I don't know where McLean County is.

Q. Bloomington is the county seat. Now, supposing in connection with your comparison of coal rates that if coal was dumped at Cleveland into a boat at the railroad docks there, for vessel consumption, do you know what rate it would pay?

A. No, I do not.

Q. Do you understand it would take a lake cargo rate?

A. I don't know about Cleveland.

[fol. 2133] Q. Well, any point; I just took Cleveland. You can take Erie, Ashtabula, Sandusky, or Toledo.

A. If it moves, I don't know about consumption by vessel.

Mr. Belnap: That is all he asked you, Mr. Schimmel.

The Witness: All right.

By Mr. Day:

Q. You don't know what rate it would take?

A. No.

Q. Who supplied you with these coal rates?

A. I looked up some of them myself; most of them, with the Illinois Coal Traffic Bureau, 307 North Michigan.

Q. You got them from the Illinois Coal Traffic Bureau? Could you give us any information as to the destinations of your outbound shipments shown on your exhibit 77?

Mr. Belnap: Do you want the complete total, or just representative.

Mr. Day: Have you got the complete total?

Mr. Belnap: He must have, in his office some place; it is quite a volume of business.

Mr. Day: I want the best information he can give me.

The Witness: Do you want the even rate, lake local and barge, or just the barge?

By Mr. Day:

Q. Well, give it to us by the barge, if you have got it there.

A. The majority of that, and the large percentage, rather, moved out by rail to the Atlantic Seaboard.

[fol. 2134] Q. That is what is shown via rail?

A. 17,384,610 pounds; the majority of that went to the Atlantic Seaboard.

Q. Recently?

A. A large percentage, yes.

Q. For export?

A. For export.

Q. And what about that via lake; was most of that for export too?

A. Well, not so much of it; not as large a percentage as of the other. There was some export and some domestic.

Q. What percent would you say for export, approximately?

A. I don't believe I would want to make a guess.

Q. Would you say whether it was half or more?

A. No.

Q. I do not observe anywhere in your figures that any of your grain was consumed locally in Chicago; did you have any such grain?

A. No grain by——

Q. Everything you haul is shipped out?

A. Grain in and grain out, outside of the cancellation account quarterly adjustment; that billing was canceled, probably as house shrink loss.

Q. But you do not sell to any of these large consumers around Chicago, like Corn Products Refining Company, or [fol. 2135] American Maize Products?

A. Yes.

Q. Wouldn't that enter into this local consumption?

A. During this period we have not sold them any grain.

Q. That is what I am getting at; none of this grain shown on your exhibit was for local consumption?

A. No.

Q. So that it is fair to assume that practically all of your business is through business; you get it into Chicago, and you ship it out?

A. Well, a good percentage of it, yes; but I do not consider when we ship these grain cars across town to American Maize or any of these large consumers that it is all locals; they operate on through rates too, you know.

Q. Do you take into account that they might move it beyond Chicago on some through rate?

A. I do not take that particularly into account; that is their business.

Q. Then, if you did sell to Corn Products, for instance, it would be shown here under the head of cancellation, would it not, so far as you are concerned?

A. No; I would probably have made another heading in there and showed that across town to industries.

Q. But so far as your exhibit goes, there is none of that business shown?

[fol. 2136] A. No.

Q. Is this a representative business for that period, May 1 to November 30th, 1939?

A. Why, fairly so.

Q. There is nothing unusual or extraordinary about the handling of your business, then?

A. No.

Mr. Day: That is all.

Exam. Taylor: Recess for five minutes.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. Mr. Day, you concluded your cross-examination?

Mr. Day: Yes.

Mr. Enoch: I overlooked a question.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Schimmel, isn't it true that of all the grain brought into Chicago by barge 90 per cent or more is towed in by Mechling?

A. I couldn't say as to that per cent, Mr. Enoch.

Q. You do know that by far the greater portion of all of that barge grain is towed in by Mechling, don't you?

A. Yes, I would say the greater portion.

Q. Now, on your exhibit 67, the second page, you mention a Barry barge line; that barge line did not handle any corn to you, did it?

[fol. 2137] Mr. Belnap: You mean Continental Grain Company?

Mr. Enoch: Yes.

The Witness: No; they were in towing service; they had done some towing.

By Mr. Enoch:

Q. For whom?

A. They have towed for Hay.

Q. So far as you know, they never have barged any grain in their own right?

A. Oh, yes, they have.

Q. In 1939?

A. Not in 1939.

Q. Well, so far as you know, they never barged any grain in their own right in the year 1939?

A. No.

Mr. Enoch: That is all.

Exam. Taylor: Mr. Brown, any questions?

Mr. Brown: No.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. You mentioned that the river has been frozen up the past two weeks?

A. Yes.

Q. Do you know whether or not any grain is being received from Morris, Illinois, by way of the river during the past two weeks?

A. Yes, they have been coming in from Morris with barges in the last two weeks.

[fol. 2138] Q. In other words it is frozen beyond, south of Morris; is that right,—south and west?

A. I understand it is frozen around Marseilles. That is a little southwest of Morris.

Q. And that, then, makes it impossible for your shipments from LaSalle, those being the ones we referred to, to come through for a couple of weeks?

A. Yes.

Q. Referring to your exhibit 75, under Duluth and Superior to New York, domestic, you show a 39-cent rate; do you know whether that is a joint through rate?

Exam. Taylor: That is in the last column, under all-rail.

The Witness: Yes, that is a joint through rate.

By Mr. Macaulay:

Q. Do you know whether any grain is shipped out of Chicago to either Central Freight Association territory or to Trunk Line territory on the local rates?

A. None, to my recollection.

Q. It all goes out under the reshipping or proportional rates; is that correct, that you know of?

A. From Illinois.

Q. No, from Chicago?

A. From Chicago?

Q. Yes; all grain leaving Chicago, that you have knowledge of, leaves Chicago on either the proportional or the [fol. 2139] reshipping rates; is that correct?

A. No——

Q. Well, if it does not go out by local, how does it go out?

A. It goes out on either trans-Mississippi, Northwest, or reshipping; or in a case of the proportional or reshipping rate to the Eastern territory.

Mr. Belnap: Would you add to that also on the balance of the through rates which are lower than either the reshipping or the proportional rates?

The Witness: Yes, sir.

Mr. Belnap: I think Mr. Macaulay's question was whether any grain was ever shipped out of Chicago at all on the local rates.

Mr. Macaulay: He answered that, Mr. Belnap.

The Witness: I answered that.

Mr. Enoch: You mean at no time?

The Witness: To my recollection, Mr. Enoch, I have never billed any shipments out of Chicago on the local rates. There is one exception, however, to Decatur, Illinois; going back to Decatur, however, when the movement to Decatur is finally tied up with the origin on the grain. Decatur has used that reshipping or proportional rate to eastern territory, and they have a route via Decatur, connecting lines reaching Eastern Trunk Line.

Mr. Belnap: That is, a route from Chicago via Decatur?

[fol. 2140] The Witness: Yes, sir.

By Mr. Macaulay:

Q. Have you ever applied the Northwest application to any grain arriving in Chicago via lake from other than the upper lake ports?

Exam. Taylor: You mean, for example, Milwaukee or Green Bay?

Br. Mr. Macaulay:

Q. For example, Montreal, or possibly Buffalo.

Exam. Taylor: Via Chicago?

Mr. Macaulay: Via Chicago, yes.

The Witness: During the drought years, when they imported Argentine corn, we used ex-lake applications from Chicago northwest rating.

By Mr. Macaulay:

Q. When was the first shipment that you have knowledge of arriving at Chicago by barge, that was billed out under tariff 245 or 535?

A. I couldn't give you the date; but it is probably sometime during 1935.

Q. Do you know whether or not there was any barge grain arrived before 1935 that may have received that application?

A. I don't know as to that.

Q. Referring to exhibit 77, you were asked the disposition of the 162,000,000 pounds of grain outbound via lake; and you stated that not all of it was for export. Did some of that grain go to Buffalo for trans-shipment via rail to [fol. 2141] points east?

A. It did.

Q. Did a substantial amount of that grain go that way?

A. Yes.

Q. Would you say that one-half, or more went that way?

A. I previously stated, Mr. Macaulay, I wouldn't want to make a guess. It would just be purely a wild speculation for me to guess it.

Q. But a substantial amount, you are sure, was transshipped via rail from Buffalo?

A. Yes.

Q. Is there any navigable water course from Buffalo to New York via which grain can be transported from Buffalo to New York?

A. Yes, over what is known as the New York state canal.

Q. Do you know whether grain is actually transported that way?

A. I understand that it is, yes.

Q. You don't know what the rate is from Buffalo to New York, though, do you?

A. No.

Mr. Macaulay: That is all.

Exam. Taylor: Any other cross-examination of this witness? (No response.) Is there any redirect?

Mr. Belnap: Yes, I have some questions.

Redirect examination.

[fol. 2142] By Mr. Belnap:

Q. You mentioned that some of the grain brought in on these lake local rates was subsequently reshipped under transit to Battle Creek; is Battle Creek one of the most important consuming points for grain in the Central territory?

A. For corn.

Q. How could you reship that lake local corn, Mr. Schimmel, inasmuch as the tariffs of the Western Lines published the local rates into Chicago provided that transit will not be applicable in connection therewith; just tell us what you do.

A. I go back to the point of origin of my inbound billing, pick up my through to Battle Creek, deducting what has already been paid in to Chicago to arrive at the balance out rate from Chicago. I might add that in some instances the lake local rate is within a cent, half a cent of the interstate rate.

Q. I would like to have you give it a little more detail, Mr. Schimmel: you get a shipment in on a lake local; you register that bill with the Inspection Bureau, do you?

A. Yes, it is registered.

Q. Now, when you want to ship that grain out,—let us first assume the grain came in from Peoria;—that is beyond the lake local territory, isn't it?

A. Oh, yes.

Q. Say from LaSalle, it came in on the lake local rate; that corn would pay 9 cents into Chicago under your exhibit 67?

[fol. 2143] A. That is right.

Q. You register that bill with the Inspection Bureau; then, when you want to reship that grain, what do you actually do? You said, pick up; I want the physical operations.

A. That inbound bill from LaSalle is tendered to the Central Inspection Bureau, and they show the inbound rate to Chicago of 9 cents, through rate, 19 cents, balance out, 10 cents; and the difference between the lake local and the interstate rate to Chicago is made in an adjustment between the eastbound and westbound carrier.

Q. As far as you are concerned, you simply surrender the bill and get a balance out of 10 cents?

A. That is correct. I do not have to pad the rate myself.
Q. So you do get transit on a lake local bill?
A. I do.

Mr. Enoch: Intrastate.
Mr. Belnap: I don't think I get your point; would you develop what you are thinking about?
Mr. Enoch: I would like to know if you get the balance of an interstate rate, by surrendering an intrastate bill.
The Witness: Yes, I get the balance.

By Mr. Enoch:

Q. Joint one-factor rate from LaSalle to Battle Creek?
A. Yes.
Q. You pay an intrastate rate to Chicago; three months [fol. 2144] later you pay the balance of the interstate rate to Battle Creek, when you ship outbound?
A. Through rate; one-factor through rate is an interstate.

By Mr. Belnap:

Q. You do, Mr. Schimmel, in answer to Mr. Enoch's question, surrender a bill representing an intrastate movement and obtain the balance of the through interstate rate to Battle Creek?
A. Yes, sir.
Q. And that balance, that situation is 10 cents?
A. Correct.

Mr. Enoch: May I interrupt you to say, are you going to cite the tariff authority for that application?

By Mr. Belnap:

Q. What is the tariff authority for that?
A. I think I can give it to you.
Q. Did you look for the tariff authority for the joint through rate?
A. Yes; it is Agent L. E. Kipp's Western Trunk Line 68-N; I don't know the ICC number.
Q. The joint through rate is in that tariff?
A. Yes.

Mr. Enoch: Oh, I am talking about the provision that authorizes the application of a transit balance to measure the outbound charge in such a situation.

By Exam. Taylor:

Q. Well, Mr. Witness, does that tariff refer to a transit tariff—and if it refers to a transit tariff do you apply all [fol. 2145] of the rules in that transit tariff?

Mr. Belnap: All those which are applicable, you would mean?

Exam. Taylor: Yes.

Mr. Belnap: There are two questions there; would you answer the first one, so we may be straight on the record: is Kipp's tariff made subject, either by specific provision or by omnibus clause, to tariffs on file with the Interstate Commerce Commission?

A. Omnibus clause, I think.

Q. It is made so subject by an omnibus clause?

A. Yes.

Q. And the other question is when you apply this billing as you have described, do you comply with the rules in the transit tariff which are applicable to that transaction?

A. Yes, that is correct.

Q. In that particular situation, as a practical matter, however, Mr. Schimmel, do you not go out the same as if you had readjusted the inbound charges to the basis of the interstate local from LaSalle to Chicago, and then take the balance of the through rate in consideration of having paid that inbound local?

A. Yes.

Q. Tell about the mechanics of it, how it figures that way.

A. In the instance where we would use this LaSalle bill, [fol. 2146] that has paid in a 9-cent local rate. If we elect to bill out at the divisions, rather than at the through rate, then the inspection bureau will show the interstate LaSalle rate to Chicago of 12 cents, and bill the shipment at 7 cents.

Q. That is a balance, is it not?

A. Balance of 7 cents; then the inspection bureau notifies the westbound carrier of this particular——

By Exam. Taylor:

Q. The western carrier?

A. The Central Inspection Bureau——

Q. You said, notifies the westbound carrier.

A. Notifies the western carrier.

Q. The western line?

A. The western line,—to bill on the shipper for the difference between the interstate and the lake local rate, which would be 3 cents.

By Mr. Belnap:

Q. Do you sometimes handle it that way?

A. Yes, sir; we have.

Q. Do you sometimes handle it by just submitting a 9-cent bill and asking it to go out on a 10-cent balance?

A. Yes.

Q. In either event, isn't this what has happened: you paid the 7 cents balance, considering interstate rates only, plus 3 cents?

A. Yes, that is correct.

Q. That 3 cents being the difference between the lake local [fol. 2147] and interstate to Chicago?

A. That is correct.

Mr. Brown: He has paid a through interstate rate from the point of origin to final destination.

By Mr. Belnap:

Q. When the transaction is all completed?

A. That is right.

Q. What is the Northwest proportional from Chicago to Battle Creek?

A. I think it is 15 or 16 cents; I am not quite sure of that. The Northwest is 14½ cents; this is June 30th, 1939, issue.

Q. So in that situation does your lake local tonnage have a much better opportunity of getting out of Chicago than your ex-barge tonnage?

A. Yes, very much so.

Q. To the extent of the difference between 10 cents and 14½ cents?

A. That is correct.

Exam. Taylor: Now, you are commencing to talk about barge shipments, when you were talking about lake locals. The lake local is a rail rate, as I understand, not a barge rate.

Mr. Belnap: That is right; and I was asking in this last question, Mr. Examiner, to compare the opportunities with the respective tonnages, grain coming in via rail on the

lake local on the one hand with grain coming in via barge [fol. 2148] on the other hand, insofar as Battle Creek is concerned.

Exam. Taylor: All right.

By Mr. Belnap:

Q. You understood the question that way, did you, Mr. Schimmel?

A. Yes, I did.

Mr. Belnap: His answer is that the lake local has a better opportunity of getting him there, to the extent of 4½ cents, considering LaSalle as an origin. Mr. Schimmel, is that situation just described true as to other Central Freight Association destinations, where you have joint through rates which are less than the Chicago combination?

The Witness: Yes, it is.

Mr. Enoch: I would like to know where that has been done, and if he has made shipments.

By Mr. Belnap:

Q. Have you made shipments under a situation we have talked about to Battle Creek?

A. Yes, I have.

By Exam. Taylor:

Q. Which situation?

Mr. Belnap: Lake local tonnage reshipped to Battle Creek on the balance of the interstate through rate.

The Witness: Yes, that is correct.

By Mr. Belnap:

Q. And have you done that in preference to reshipping ex-barge tonnage to Battle Creek?

A. Certainly.

Q. You mentioned some oral agreement you had with [fol. 2149] John I. Hay Company as to the service rendered by that company to Continental; I think you just referred to it in general terms. Can you tell us the character of the agreement, both so far as the obligations of the Continental are concerned, and the obligations of John I. Hay Company are concerned?

A. Well, so far as the Continental Grain Company are concerned, they only agree to pay him for whatever barges he hauls in; and his only obligation to us is furnishing us barges when we call for them and transport in for us at the rate he sets out to haul for.

Q. Have you any contract with him whereby it will be a breach of that contract if the next time you ask him to place a barge he names a rate different——

A. No, there wouldn't be any contract; there is no contract or breach. We can quit each other any time we want to.

Q. Do you have any obligation to deliver any specified amount of tonage to John I. Hay Company?

A. No, sir; none whatsoever.

Q. Or have you any agreement that you must deliver your tonnage to him?

A. None, no.

Q. You do use A. L. Mechling Barge Line, do you not, from the same points which John I. Hay is hauling for you?

A. We do.

By Exam. Taylor:

Q. Right while you are on that line,—is there anything [fol. 2150] in this record to show what the rate to LaSalle or Morris, or any of these points is by way of the John I. Hay Company to South Chicago—you have a verbal agreement with them; it has not been stated the amount of the rate yet.

A. That is 1½ cents a bushel, or 2.675 cents a hundred, is what he sets out to haul grain for.

By Mr. Belnap:

Q. That is from LaSalle only?

A. From LaSalle.

Q. Does your exhibit 67, taking the stations Ottowa and south, show the rates which the John I. Hay Company holds itself out as willing to transport for to the Continental Grain Company?

Mr. Enoch: Object; there isn't anything on this exhibit that shows the John I. Hay Company holds itself out to haul for anybody.

Mr. Belnap: I asked him whether those are the rates which John I. Hay Company holds itself out to haul for Continental for.

The Witness: Yes.

Mr. Enoch: Object to that, and move the answer be stricken. It calls for the conclusion of the witness. The purpose of this is to establish a certain status for the barge operation; and there wasn't anything on direct or cross of which I am aware or now recall, that had to do with the status of the John I. Hay Company, or any effort to show [fol. 2151] by the protestants here what the status of that operator was.

Mr. Belnap: The Examiner asked if we would identify the rates we were talking about. That is the purpose of my question, and the reason I ask Mr. Schimmel to answer it.

Exam. Taylor: What I wanted was the rates, Mr. Enoch that were charged by John I. Hay Company; and I found that they are the rates that are named in the second column of figures in exhibit 67.

Mr. Belnap: Except I do not include Morris and Seneca in that question of the witness, Mr. Examiner, because the record already shows that the charges there shown for barge transportation are those named by the Allied Barge Corporation.

Mr. Enoch: John I. Hay Company hasn't any rate, as a matter of fact, according to Mr. Schimmel's testimony.

By Mr. Belnap:

Q. Did you say that, Mr. Schimmel?

A. No, I didn't say that.

Q. Don't you pay a rate when John I. Hay Company transports for you?

A. They are in evidence; the exhibit shows we paid 1½ cents.

Q. That is from LaSalle only?

A. From LaSalle.

Q. That is, 1½ cents a bushel?

A. That is correct.

By Exam. Taylor:

Q. That is a verbal agreement?

[fol. 2152] A. It is.

Q. No publication of that?
A. He just sets himself out to haul for that amount.

Mr. Belnap: That is all I have on redirect.
Exam. Taylor: Does the redirect bring out any recross?

Recross-examination.

By Mr. Enoch:

Q. To what other points than Battle Creek have you been paying this balance for an outbound haul when the inbound grain has been on an intrastate rate?
A. The lake local—I believe, Mr. Enoch, Battle Creek is the only particular point that I have used that billing to. However, it would apply to other points.
Q. What other points?
A. Toledo, Detroit.
Q. Many of them?
A. Well, there is quite a number of them up in Michigan; there would be any number up in that territory;—Ohio; wherever there is through one-factor rates.
Q. If you follow that practice, this effort of the inbound lines to present transit when grain moves into Chicago on a low intrastate rate is without any success whatever, itn't it?
A. I wouldn't say that.
Q. What you do is take a shipment which is obviously an intrastate shipment, such as the shipment from LaSalle to Chicago, which has paid an intrastate rate, and three months [fol. 2153] or six months after its arrival, you convert that into an interstate shipment from LaSalle to Chicago to Battle Creek; that is the effect of it, isn't it?
A. Yes, we take advantage of the one-factor through rate.
Q. Although the prior movement inbound has for three months been intrastate?
A. Well, if it was that time, yes.

Mr. Brown: Mr. Enoch, it would be intrastate even if he paid the 12-cent rate, as far as the transportation is concerned?
Mr. Enoch: The same thing would apply.

By Mr. Brown:

Q. Supposing you didn't have this 9-cent local rate, then the only rate you have got to Chicago is 12 cents?

Mr. Day: But he is entitled to the lower rate of the two, and that is the applicable rate?

Mr. Brown: Surely; he is not transiting on the lake local rate; he is transiting on the through rate to Battle Creek.

Mr. Enoch: He is using an intrastate shipment.

Mr. Day: He is paying on the intrastate basis in the first instance, as I understand.

By Mr. Enoch:

Q. What character of corn do you use to Battle Creek?

A. White corn.

[fol. 2154] Q. Do you get any white corn from the barges down at LaSalle?

A. Yes, some.

Q. And what did you mean when you said some; it is all yellow corn, you mean?

A. We get yellow corn; we get yellow corn and white corn.

Q. How much white corn have you got by barge from LaSalle?

A. I don't know how much white corn versus yellow corn, proportionately, that we receive. I do not have those statistics; we could probably dig them up. It would be an enormous task.

Q. Did you get any white corn by barge in the year 1939?

A. Yes.

Mr. Enoch: That is all.

By Mr. Day:

Q. Where did it come from?

A. The white corn?

Q. Yes.

A. Some from Morris, some from Seneca, some from LaSalle.

Q. Was it raised in the vicinity of those stations?

A. Yes.

Q. To whom do you sell in Battle Creek?

A. The Kellogg Company, Post, General Foods.

Q. You do not sell to General Foods, do you?

A. We have.

Q. Don't they ship their corn grits from Kankakee?

A. I understand most of their operation is now at Kankakee.

Q. As a matter of fact, isn't all of it at Kankakee?
[fol. 2155] A. I don't know.
Q. And hasn't it been for several years past at Kankakee?
A. We have shipped corn direct to Battle Creek prior to this.
Q. To General Foods?
A. To General Foods, yes.
Q. Now, if the General Traffic Manager of General Foods testified within the last couple of months that he had not received corn from any other sources, except his own plant at Kankakee, would you disagree with that testimony?
A. Just what years are you going back to now? I have said I have shipped corn to the General Foods, white corn.
Q. You have not shipped any since they built their plant at Kankakee a couple of years ago?
A. No.

Mr. Belnap: The last two years you say you have not?
The Witness: Well, I do not recall just the date that this plant was built at Kankakee, approximately two years ago.
Q. Do you know where General Foods white corn is grown in Illinois?
A. Where General Foods white corn is grown?
Q. Yes.
A. You mean the corn that they purchase?
Q. The corn that they use in the making of their corn flakes and other cereals?
[fol. 2156] A. No, I don't know.

Mr. Day: That is all.
Exam. Taylor: Mr. Cole?

By Mr. Cole:

Q. Mr. Schimmel, what was the through rate, rail, from LaSalle, Illinois, to Battle Creek, Michigan?
A. 19 cents.
Q. And what was the ex-Northwest proportional from Chicago to Battle Creek?
A. 14½ cents.
Q. And I understand that John I. Hay Company charges you 2.675 cents on the boat to haul it from LaSalle to Chicago?
A. Yes.

Q. Then, on movement from LaSalle, Illinois, up the river to Chicago, and thence rail from Chicago on the Northwest proportional would make a total charge of 17.175 cents; that is, adding the water charge to the rail charge beyond Chicago; is that correct?

A. In my exhibit I would show it a little different than that, Mr. Cole; I would add .625 for trimming at Chicago.

Q. .625 for trimming at Chicago; that makes 17.8. Now, the rail comparison that you made would still leave the rail shipper to get the benefit out of any transit out of Chicago the necessity of paying that 19 cents from LaSalle to Battle Creek, would it not?

Mr. Belnap: The rail shipper from where, Mr. Cole?

[fol. 2157] Mr. Cole: From LaSalle.

The Witness: Which gets the 19-cent rate?

By Mr. Cole:

Q. Yes.

A. Yes.

Q. So that the water transportation up to Chicago, and rail beyond, is still 1.2 cents under the cost of the rail shipper shipping under the through rate from LaSalle to Battle Creek, is it not?

A. That is correct.

Q. Then why did you make a comparison with the transit balance that was applicable to the rail shipper; do you still say that instead of the application of the 14½ cent ex-Northwest proportional that there would be any question of the water shipper who shipped it up the waterway to Chicago then securing the application beyond Chicago on the transit balance that would be applicable to the rail shipper, the 10-cent transit balance?

A. Well, I do not pay the rail freight up to Chicago on my lake local shipment from LaSalle; we buy that grain delivered Chicago.

Q. And do you buy that grain delivered Chicago for the same price that you buy your river grain delivered Chicago?

A. Yes.

Mr. Cole: I see; thank you.

Mr. Belnap: In other words, there is no rail shipper cut of LaSalle to Battle Creek?

[fol. 2158] The Witness: No.

By Mr. Cole:

Q. Well, then, Mr. Schimmel, if there is no rail shipper from LaSalle to Battle Creek, for what purpose did you compare the transit balance, only that portion of it from Chicago over to Battle Creek, with the ex-Northwest proportional?

A. Because it resulted in a cheaper balance.

Q. Then, you still think that you should pay the same value for your grain delivered in Chicago ex-rail as ex-river; and you told me you did?

A. That is right.

Q. And secure the benefits of the rail transit balance beyond Chicago to Battle Creek, whether it comes in by water or comes in by rail?

A. Mr. Belnap: He didn't say that; he didn't say he wanted transit on his ex-water grain.

Mr. Cole: I said he wanted the application of the same level beyond Chicago as the level of the transit——

Mr. Belnap: He didn't say that.

By Mr. Cole:

Q. Do you want that?

A. I am not asking for any change in rates.

Mr. Cole: That is all.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Was any of the grain that you referred to as coming in on intrastate brought in over the Rock Island from La-[fol. 2159] Salle under their tariff No. 34560-B?

A. I don't know, Mr. Macaulay; I cannot remember all these freight bills.

Q. Was there any of it brought in over the Rock Island?

A. Yes, there is Rock Island shipments come in occasionally.

Q. Is the practice you referred to, of registering your intrastate billing with the Central Weighing and Inspection Bureau and then applying that on the through rate to Battle Creek approved and recognized by the Central Weighing and Inspection Bureau?

A. They rate the billing; I don't know that their authority would mean anything. It would be legal interpretation

from there on, what the carriers say their tariff will do, and the legal provisions thereof. The inspection bureau are not the last word on these rates.

Q. I say they are the ones that police the billing?

A. They police it, yes.

Q. And they have recognized that billing, and have allowed it to apply along the lines you mentioned?

A. Yes.

Q. Are you sure that the Chicago price on ex-intrastate rail is the same as the ex-river?

A. Grain has an intrinsic worth at Chicago. No. 2 yellow corn is worth the same price; there is a bid; it is competitive.

Q. Is that true, irrespective of the billing that it comes [fol. 2160] in on?

A. There is some premium billing, if that is what you mean, in the market at times; traders pay a little bit more for it. I am not so well acquainted with that feature of the trading; I would rather not go into this market end of it.

Q. When you mentioned that ex-river and ex-rail would bear the same price, that is not based on a full knowledge of the subject; that will be developed later?

A. I was only referring to the intrinsic value; for instance, No. 2 yellow corn at Chicago. That has a set price from day to day on the Chicago board. There are slight variations, sure.

Q. You know of no variation because of lake billing as compared to Illinois proportional billing?

A. At times there has been, yes.

Q. And which bears the higher price, the Illinois proportional or the lake billing?

Mr. Cole: Mr. Macaulay is putting propositions in his questions that have not been developed from the witness. There is no foundation for his last question.

Mr. Macaulay: I was cross-examining him on the statement that he made that ex-rail and ex-river grain pay the same price in Chicago; and I am asking the foundation for his answer, the basis for his answer.

Mr. Day: Why don't you put your own witness on to contradict it?

[fol. 2161] Exam. Taylor: Off the record:

(Discussion outside of the record.)

By Mr. Macaulay:

Q. Are you the man for Continental who buys the grain?
A. No.
Q. Will there be a man for Continental that can tell us if there is a distinction?
A. Mr. McClintock will testify.

Mr. Macaulay: That is all.

By Mr. Day:

Q. Did you say you were selling corn to Kellogg at Battle Creek?
A. Yes.
Q. How long since you have sold him any?
A. Oh, we have sold him rather recently, Mr. Day. I think we had some shipments over there in November or December. And finally, I believe we had a small lot go there in January.
Q. From where?
A. From Chicago.
Q. There was grain shipped out of Chicago,—do you know where it came from?
A. No; central Illinois, and Chicago and eastern Illinois territory in Indiana.
Q. And that was corn, not corn grits?
A. Whole corn.
Q. Does Kellogg make its own grits?
[fol. 2162] A. Yes.

Mr. Day: That is all.
Exam. Taylor: Anything further?
Mr. Belnap: Yes, I have one question.

Redirect examination.

By Mr. Belnap:

Q. Mr. Schimmel, I show you Mr. Sperry's exhibit 13, which shows the interstate and the intrastate locals to Chicago from various lines in Illinois; referring to page 15 it shows stations on the Illinois Central in lake local territory. Take stations, oh, near the bottom one, Flanagan, where the interstate local to Chicago is 12 cents, the lake local is 11; Graymont, where your lake local is 12 and the intrastate local is 10; what is the through single factor

interstate rate on corn from those stations to Battle Creek?

A. 19 cents.

Q. Does that rate apply from those stations to Chicago, and back to Kankakee, and then to Battle Creek?

A. Yes.

Mr. Day: You mean a backhaul movement of that kind?

The Witness: Yes.

By Mr. Day:

Q. Did I understand you, you mean that this traffic would move up through Kankakee to Chicago, and then move back through Kankakee and thence to Battle Creek on a rate of 19 cents?

A. Yes.

[fol. 2163] With no charge for that backhaul?

A. No charge whatsoever.

Q. Did you give the tariff reference?

Mr. Belnap: The tariff reference, I assume, is in Mr. Sperry's exhibit.

Mr. Cole: Not the 19 cents.

By Mr. Belnap:

Q. What is the tariff reference to that 19 cent rate?

A. In Agent Kipp's tariff 68-N; we are still short the ICC number.

Q. As far as the route is concerned, do you know what that route if from origin to Chicago, and then back to Kankakee; do you recall what it is?

A. Illinois Central to Chicago, New York Central to Kankakee.

Mr. Day: You do not get the New York Central into any route like that; it goes out of here New York Central but it does not go back to Kankakee going there; that is my point. You say that Kipp's tariff contains authority for the backhaul movement of about 120 miles?

The Witness: The Illinois Central tariff provides for the movement into Kankakee, and then it hooks up with the through interstate rate from the point of origin to Battle Creek; and the routing is permissible via Kankakee.

Mr. Day: You are sure of that?

The Witness: Yes.

Mr. Day: What is the number of that tariff?
[fol. 2164] A. Kipp's 68-N.

By Mr. Belnap:

Q. Take from the Alton Railroad, shown on page 2 of Sperry's exhibit 13, and down at stations LaRose and Washburn from whence we had some shipments in this case; do those points take the 19-cent rate to Battle Creek?
A. They do.
Q. Does that rate apply from the stations named to Chicago, thence to Kankakee, and thence to Battle Creek?
A. Yes, sir.
Q. And those are stations in the lake local territory?
A. Yes, on the Alton.

Mr. Belnap: That is all.
Exam. Taylor: Is there anything on re-cross.

Recross-examination.

By Mr. Day:

Q. You say you have not got this tariff naming the rate and route from Flanagan and Graymont to Battle Creek, but you do say that tariff would apply into Chicago via Illinois Central, out of Chicago via New York Central; and the New York Central rate, of course, is down to South Chicago, Indiana Harbor and through Schneider back to Kankakee, Illinois, and then from Kankakee, Illinois, back in a northerly or northeasterly direction to Battle Creek; that, you say, is the tariff route?
A. That is right.
Q. And that in the tariff there is provision for such a [fol. 2165] route as that.
A. There is.
Mr. Belnap: In which tariff, Mr. Schimmel?
A. No. 68, on the through move.

By Mr. Day:

Q. Now, on this relatively short movement, then, from Flanagan or Graymont, to Battle Creek you would have that circuity approaching 150 miles by reason of that back haul?
A. Yes.

Q. And would the tariff also have the direct route of the Illinois Central to Kankakee, thence New York Central direct from Kankakee to Battle Creek, which would not enter Chicago at all?

A. I don't know about that, the direct in there.

Q. You don't know whether it has that direct route?

A. Well, I would say that it would have the direct route in there; but I am not positive on that point.

Q. It does have this ridiculously circuitous and back-haul route that you described?

A. Yes, it has that.

By Mr. Enoch:

Q. Directing your attention to these expense bills on intrastate shipments from points in Illinois to Chicago that have paid the so-called lake local, have you ever attempted to secure the application of any proportional rate or reshipping rate out of Chicago, all rail, by surrendering that [fol. 2166] kind of a bill?

A. Oh, we have received the proportional rates, Mr. Enoch.

Q. Do you do that the same as you get the transit balance?

A. Yes, it is in practically the same manner. I have used the two systems. Again, where these points, where the lake local as compared with the interstate to Chicago was maybe one-half cent a hundred different, and we have used the same system I explained before in billing out. On the one hand we bill out at the balance of the rate; and on the other hand they paid the rate but had the inspection bureau put it 12 cents, and then bill it out at the regular proportional. In that case the western road would finally bill on us for one-half cent or one cent, whatever it would be.

Q. I am not sure that I made myself clear: take a shipment originating at a point in Illinois, from which to the destination in the east there is no joint one-factor rate; and that shipment moves into Chicago on the lake local, which is an intrastate rate; now, when you want to move that to the eastern destinations,——

A. You mean on the reshipping rate?

Q. Yes, on a reshipping rate, or a proportional rate to that point?

A. The usual practice is to use regular reshipping proportional to go out; the regular Illinois reshipping. Take New York as an example, 26 cents: now, if we applied one [fol. 2167] of these lake local bills, and we obtained a 26-cent proportional rate out, then, as I expressed before, the Inspection Bureau would notify the western road to bill back upon the shipper for the difference between the lak local and the interstate to Chicago.

Mr. Brown: Just on that point: now, Mr. Schimmel, on your billing directions which you take down to the Bureau it shows the point of origin, the kind of grain, and the weight, and where it is going; doesn't the transit bureau show on there the interstate rate to Chicago which you must pay before you get that 26-cent rate?

The Witness: Yes, they do.

By Mr. Brown:

Q. So you are not getting transit on the intrastate rate, but you are transiting on the interstate rate?

A. Well, yes, that is——

Q. I want to get you straight on that: the transit bureau does not take that intrastate rate and give him transit on that; the bureau tells the Rock Island Railroad there is some more money coming to you, and you get it from him; if he does not pay it he is cut off from transit privilege.

Exam. Taylor: What tariff provision authorizes the inspection bureau to tell him that?

Mr. Brown: He goes to 413-K, that has been quoted so much in this record.

Exam. Taylor: That is a rate tariff.

Mr. Brown: No, transit tariff.

[fol. 2168] Mr. Enoch: That is an eastern line transit tariff.

Mr. Brown: No, it is not; the Rock Island is a party to it.

Mr. Enoch: Exhibit 62?

Mr. Brown: Yes, sir, every railroad in Chicago is a party to that tariff.

Mr. Enoch: Mr. Brown, do you recall where the particular provision in this tariff is that relates to that?

Mr. Brown: There are three parts to that; I want the grain reshipping part, the opper part of Rule 61,

Exam. Taylor: Would the bill give any consideration to Rule 15 on page 6 of that tariff—Iwish you would look at that, and refresh your memory on it.

Mr. Brown: That has occurred under 15.

Exam. Taylor: What do you mean, that has occurred?

Mr. Brown: The inbound railroad has received its full tariff rate, which may or may not be what the inbound railroad finally receives in the division of the through interstate rate from point of origin to final destination.

Exam. Taylor: That would not apply in connection with the barges, would it,—on movements via barge to Chicago?

Mr. Brown: No.

Exam. Taylor: Because there is no tariff rate?

Mr. Brown: Yes, there is a tariff rate in the eastbound railroad's tariff, which shows on the inbound grain their [fol. 2169] charge so-and-so.

Exam. Taylor: Beyond Chicago?

Mr. Brown: Yes.

Exam. Taylor: But not up to Chicago?

Mr. Brown: No.

Exam. Taylor: Rule 15 reads shipments delivered to transit houses will be subject to the full tariff rate of inbound tariff, based on actual rates subject to tariff minimum.

Mr. Brown: Yes; and the barge bill of lading or freight bill represented has been registered with the bill and shows——

Mr. Belnap: Mr. Brown, this Rule 15 you are discussing, does that have any effect as to the application of outbound proportional or reshipping rate on the lake traffic?

Mr. Brown: No; it just says—you must register everything you have got with the transit bureau, I don't care whether it is truck or lake or rail, or on what kind of rate; you have got to register that tonnage with the bureau before you can exercise your option of any kind of transit under that tariff, or under the rate tariff in connection with it.

Mr. Enoch: I understand Mr. Belnap's position here that transit is not availed of at Chicago, and is not necessary in connection with the ex-barge rate.

Exam. Taylor: In connection with the engagement of the proportional reshipping rates out.

Mr. Belnap: The through shipment being subject to the [fol. 2170] Commission's jurisdiction.

Mr. Enoch: Well, it just is not transit.

Mr. Belnap: In that sense, it certainly is not.

Mr. Enoch: In what sense could it be?

Mr. Belnap: You will find the shipments which go to storage at the port; the Commission will refer to them as transit arrangement, and consequently reforwarded. Now, it is not transit in the sense we have other rail movements; we know that. The Commission refers to it as transit.

Exam. Taylor: In connection with those shipments that are engaged as the result of it moving that way, imported in that fashion through a warehouse, or what have you at the port,—they have to apply all the rules in the transit tariff to engage in the rate outbound.

Mr. Belnap: All the rules which would be applicable, yes. I think that should always be said, Mr. Examiner; because any one of these tariffs contain groups of rules of which only a few of them may be applicable. Isn't that correct, Mr. Brown?

Mr. Brown: That is right. Grain may come in from LaSalle, corn, on the lake local rates; that is white corn. There is a buyer in Milwaukee, of white corn; there is a fellow up there who is a constant user. He buys that corn here in Chicago, and they put the LaSalle bill behind it; it is not necessary to do it, because it is a local rate from [fol. 2171] here to Milwaukee, 5½ cents. Yet we have to cancel that anyway; the man at Milwaukee says, I want a bill behind it, because I may want to convert that whole thing clear back from LaSalle to an interstate shipment.

Exam. Taylor: Do you take the same position, Mr. Belnap, with regard to Rule 61 that I referred to?

Mr. Belnap: You mean the top portion that Mr. Brown referred to?

Exam. Taylor: Yes.

Mr. Belnap: I take the position that that rule does not affect the rate application in the rate tariff, as to the applicability of proportional or reshipping rates.

Exam. Taylor: Thank you.

Mr. Belnap: Am I correct in that, Mr. Brown?

Mr. Brown: Not altogether; ex-barge corn is the same, is in the same position as corn that comes in from Iowa, flat local rate to Chicago; that is registered with the bill. And in that you get the through rate from origin to destination, whatever it may be. The balance of the rate is the reshipping rate.

Mr. Enoch: You mean after it moves out of Chicago six months later than the time it comes in?

Mr. Brown: Yes, sir; grain from your stations in Iowa, and pay a flat local rate. Under that rule they will take surrender of that bill through the bill with Mr. Schimmel [fol. 2172] here, and give him the reshipping rate.

Exam. Taylor: The distinction being that the Iowa origins show the rate in, and the barge shipments do not.

Mr. Brown: That is the distinction, in which the eastern rails have no particular interest financially.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: Let me ask your witness here,—he is an expert; when you engage the outbound proportional or reshipping rate, do you consider applicable rules in the transit tariff? I said applicable rules, now.

The Witness: Yes, there is a rule in the——

By Exam. Taylor:

Q. For instance, you would not apply a backhaul rule here, authorizing backhaul on your shipments?

A. No, certainly not.

Mr. Belnap: I have one other matter, Mr. Examiner: There was a discussion, Mr. Examiner, as to Mr. Schimmel's exhibit 73, as to the tonnage which was embraced therein,—embraced within each of the specifications shown on that exhibit. I have here a copy of the source for those tonnage figures for the year 1935, annual report of the Chief of Engineers, U. S. Army, 1936,——

Exam. Taylor: Just off the record.

(Discussion outside of the record.)

Mr. Belnap: —in which on page XI is contained the defi- [fol. 2173] nitions of the terms used for the kinds of traffic for which statistics are given in the report. I would like to read the two paragraphs from that which define the terms as they appear on exhibit 73. This is headed Terms for Kinds of Traffic: The terms applied to the kinds of traffic as found in this report are explained as follows: imports and exports.—These terms apply to traffic between the United States and foreign ports, including the Philippine Islands and the Canal Zone. Traffic with Canada is

supplemented by the term 'Canadian,' to differentiate from over-seas traffic. Coastwise Receipts and Coastwise Shipments.—These terms apply to traffic receiving a carriage over ocean, the Gulf of Mexico, or important arms of the oceans, or the Gulf of Mexico, with the exception of Chesapeake Bay and Puget Sound localities, and also to traffic with Alaska, Hawaii and Puerto Rico. Traffic between Great Lake ports and Seacoast ports, is also termed coastwise. Lakewise Receipts and Shipments.—These terms apply to traffic between United States ports and the Great Lakes.''

Exam. Taylor: Is that all?

Mr. Belnap: That is all I have.

Exam. Taylor: I just have one more question, Mr. Schimmel: in engaging the application of the proportional and reshipping rates east of Chicago, do you use rules 15 and 61 of Agent B. T. Jones' ICC 3204?

The Witness: Yes, we would observe those rules.

[fol. 2174] Exam. Taylor: Is that all from this witness?

Mr. Belnap: That is all.

Exam. Taylor: Does that bring up any other questions? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: We will recess until 2:00 o'clock.

(At 12:30 p. m., a recess was taken until 2:00 o'clock p. m., January 24, 1940.)

Afternoon Session.

2:00 o'clock p. m.

Exam. Taylor: Come to order, gentlemen.

Mr. Belnap: Mr. Examiner, Mr. Schimmel has concluded; I would like to offer his exhibits, which are Nos. 67 to 79, inclusive.

Exam. Taylor: They will be received.

(Protestants' Exhibit- Nos. 67 to 79, both inclusive, Witness Schimmel, received in evidence.)

Exam. Taylor: Call your next witness.

Mr. Belnap: Mr. Rich.

Exam. Taylor: Off the record, identify your exhibits:

(Protestants' Exhibit- 80 and 81, Witness Rich, marked for identification.)

C. J. RICH was sworn and testified as follows:

Direct examination.

[fol. 2175] By Mr. Belnap:

Q. State your name, please.
A. C. J. Rich.
Q. Whom are you employed by, Mr. Rich?
A. Norris Grain Company.
Q. In what capacity?
A. Traffic man.
Q. How long have you been so employed?
A. Twelve and one-half years.
Q. Are you familiar with the issues in this proceeding?
A. Yes, sir.
Q. And acquainted with the rates and rules and regulation which are here involved?
A. Yes, sir.
Q. Have you had prepared under your supervision and direction two exhibits which have been distributed and numbered Nos. 80 and 81?
A. I have.
Q. What is your exhibit 80?
A. Exhibit 80 is a history of lake locals, interstate proportionals, and specifics from Illinois origins to Chicago, Illinois.
Q. These are the same exhibits as shown in witness Sperry's exhibit 13?
A. They are to the extent of the 1939 and present rates.
Q. But the origins themselves?
[fol. 2176] A. The origins are the same as those shown in Agent Sperry's exhibit 13.
Q. Did you carry this history of the lake locals back to the time of their first publication?
A. I did.
Q. What is your exhibit 81, Mr. Rich?
A. Exhibit 81 shows the receipts of all grains via lake, of all grains via barge and of grain via rail for the period

from May 1, 1939, to November 30, 1939, and for the period December 1, 1939, to January 13th, 1940; and also the disposition by per cent of all grain received by water in the period from May 1, 1939, to January 13, 1940.

Q. Does this situation present any different showing, if you brought it right down to date; that is, have you any particular situation since January 13th, 1940 that is worthy of comment?

A. As the exhibit from December 1, 1939, to January 13th, 1940, shows, the preponderant rail movement east of Chicago, so would the period from January 13th, 1940, to the present time show the same preponderant proportion.

Q. Have you ascertained from your records, Mr. Rich, the disposition you made of certain grain received by barge as to which the inbound billing is covered by exhibits in this record?

A. I have.

Q. Can you take each of those up in turn, those exhibits, [fol. 2177] and state what the disposition was; do it in a fashion so that you will identify the inbound bill to which you refer, and then what you did with that grain?

A. Exhibit No. 27 covers the steamer Maritana loaded at Duluth, Minnesota, and unloaded at the Irondale elevator on August 25, 1938.

By Exam. Taylor:

Q. Where is the Irondale elevator?

A. The Irondale elevator is located at 107th and Muskegon Avenue; that is in South Chicago.

Q. Is it on the river?

A. It is on the river. It contained 8,047,680 pounds of tonnage.

By Mr. Belnap:

Q. I want you to just summarize it, so that the record will show where you shipped the grain by general description, whether by lake or by rail into Central territory, or by rail into Eastern territory; and if you can, where the preponderance of it went.

A. A small proportion of this tonnage was sold to local industries, such as the Northwestern Yeast Company, Arcady Farms Milling Company, B. A. Eckhart Milling Company; and what their disposition of it was, I don't know.

Q. You simply had it switched across town?

A. Across town to their plant.

Q. That is at Chicago?

A. Yes. About one-half of the remainder went to destina-
[fol. 2178] tions in Central Freight Association territory, using the ex-Northwest rate application from Chicago to such destinations as Toledo, Ohio, Louisville, Kentucky, Lawrenceburg, Indiana, Indianapolis, Indiana, Cincinnati, Ohio. And the remainder went to Trunk Line and New England destinations, such as Norfolk, Virginia, Glynbrook, Maryland, Salem, Virginia, Blue Ray, Virginia.

Q. Did it all move out by rail?

A. It all moved out by rail.

Q. What species of grain does that cover?

A. This is rye; exhibit No. 32 is a barge, No. 745, from Morris, Illinois, on November 25, of soya beans, unloaded in the Norris elevator on November 29, 1939, the entire unloading weight of which was switched across town to the Archer Daniels Milling Company, on the St. Paul Railroad. Exhibit No. 33 had a split load of oats and corn. The oats went to destinations in Central Freight Association territory;——

Exam. Taylor: Just a minute; did you say exhibit 28, the preceding one?

The Witness: Exhibit 32.

Mr. Belnap: Exhibit 32 was soya beans.

Exam. Taylor: All right, exhibit 32 also had some oats, didn't it? The great majority of that shipment——

The Witness: My records do not show that it had any oats in it.

[fol. 2179] By Exam. Taylor:

Q. Are you sure it is exhibit 32?

A. That is what I have here; yes, sir. I had exhibit 33, which had oats in it.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Exam. Taylor: The freight bill covering the shipment marked exhibit 32 shows the shipment to have consisted of 19,271.08 bushels of oats, and 8,014.20 bushels of beans.

The Witness: The exhibit 32 showing oats was overlooked be me, and I have not got the disposition of that oats portion; but I can furnish it.

By Exam. Taylor:

Q. You also made the statement that beans to which you referred were switched across to the——

A. Switched across town to the Archer Daniels Midland Company, on the St. Paul Railroad.

Q. This bill shows that 16,680 pounds of oats were unloaded in the Irondale elevator on November 27th, and 480,960 pounds of beans were unloaded in the Norris elevator on November 29th.

A. I have the bean portion here, but not the oat portion.

Mr. Belnap: We will supply that, Mr. Examiner. I did not notice that he had overlooked that.

Exam. Taylor: Proceed.

The Witness (Continuing): Exhibit 33, barge No. 4, from Henry, Illinois, on November 25, 1939, had on it 150,480 pounds of oats, and 241,480 pounds of corn.

[fol. 2180] By Mr. Belnap:

Q. And it also had 235,000 and some pounds of beans?

A. I have not got the bean record here, but I also can furnish that.

Q. Tell us about the oats; where were they shipped?

A. The oats on this barge went to destinctions in Central Freight Association territory.

Q. What were the towns?

A. Bellevue, Ohio and Pittsburgh, Pennsylvania.

Q. What rate was applied?

A. To Bellevue, Ohio, the ex-Northwest rate of 16½ cents was applied; and to Pittsburgh, the Northwest rate of 21½ cents was applied.

Q. Where did you ship the corn?

A. The corn went large- to Paris, Illinois, via the Big Four Railroad, on a 12-cent local rate; and one car went to North Troy, Vermont, via the Wabash, Canadian Pacific Railroad on the 28-cent proportional rate.

Q. Is that a processor at Paris, Illinois?

A. Yes, sir; a starch mill.

Q. That is a starch mill?

A. Yes, sir. Exhibit No. 34, barge No. 7, from Chillicothe, Illinois on November 27, contained 690,600 pounds of corn, two cars of which went to Paris, Illinois, five cars went to Toledo, Ohio, and a small portion went to North Troy, Vermont.

[fol. 2181] Q. On the Toledo shipment you applied the Northwest proportional?

A. We did. I believe the rate is 15½ cents.

Q. To North Troy, Vermont, you applied what?

A. North Troy, Vermont, we applied the proportional rate of 28 cents. Exhibit No. 35 is Barge No. 1108, from Patonville, Illinois on April 7th, 1939. It contained 1,546,290 pounds of corn and it was unloaded in the Norris elevator.

Exam. Taylor: Unloaded in the Norris private and public elevator?

The Witness: It is all one elevator.

By Mr. Belnap:

Q. Where did you ship that corn?

A. Six cars of this barge were forwarded to Toledo, Ohio, and the balance going to Trunk Line territory.

Q. On the same rate application you previously described?

A. Yes, sir; except these destinations took the Virginia City rate of 23 cents on grain.

Q. That is the Eastern destination?

A. Eastern destination; and several cars took the Philadelphia rate of 24 cents. Exhibit No. 36 was Barge No. 1112, from Patonville, Illinois, on April 12, 1939, and contained 1,581,590 pounds. It was unloaded in the Norris elevator. Almost 1,200,000 pounds of the tonnage on this barge was used out against lake cancellation; that is, it went out by lake steamer. The rest of it went to arbitrary [fol. 2182] territory, and one car went to a Philadelphia rate point.

Q. What do you mean by arbitrary territory?

A. Arbitrary over the termini.

Mr. Brown: Over Pittsburgh?

The Witness: Yes. That is all I have.

By Mr. Belnap:

Q. Let us go back to the beginning of these and find out about the inbound billing; will you take up each of the in-

bound bills and tell us about what sort of a bill of lading you got, or where you got it from, and who made it out, and who handled the shipment,—who made out the expense bill, and how the transaction to payment of the inbound charges was handled; and also as to registration of that inbound document with the inspection bureau; give us all the details.

A. Exhibit No. 27, being a lake vessel, we surrendered two copies of the lake bill of lading to the Central Inspection and Weighing Bureau.

Q. Start with getting the bill of lading first; start right from the beginning.

A. We having purchased the cargo of rye from some company in Duluth, they after loading the rye aboard boat, had lake bills of lading issued, the originals of which they forwarded to us through banking channels; and upon receipt by us, after ascertaining that the bill of lading weigh tickets and inspection was all right, we gave the bank our check for the grain; and from then on the bill of lading belonged to us.

[fol. 2183] Q. Go ahead.

A. We took two copies of this original bill of lading to the Central Inspection and Weighing Bureau, who put their stamp and record number thereon, they keeping one copy and returning one to us. I also might add that on the bottom of these copies of bills of lading we wrote the total amount of grain which was unloaded from the boat, the boat it was unloaded from and the elevator into which it went. From then on it was live transit tonnage, and we used it out as such.

Q. You have not dealt with the expense bill or the payment of the freight charges, or anything of that sort, as yet?

A. That is all there is to that.

Q. Was there an expense bill as such, or any similar document, on that lake shipment?

A. We received no expense bill, the freight having been paid by the shipper at Duluth; and the bills of lading were marked freight to be paid as per agreement, there being no rate shown thereon.

Q. Was there any sum of money shown thereon?

A. No, sir.

Q. Is that situation commonly true as to documents covering lake movements?

A. Yes, sir.

Q. And has that always been true, that you simply have a lake bill of lading that states in general terms what the [fol. 2184] freight has been paid, but gives neither any rate nor any amount?

A. Yes, sir.

Q. You always register that document with the inspection bureau for the purpose of ultimately seeking a proportional or reshipping rate east of Chicago?

A. Yes, sir.

Q. And have the inspection bureau and the rail carriers always provided for the application of those proportional or reshipping rates on such -exlake grain as evidenced by that document?

A. That is right.

Mr. Enoch: You mean by that that they applied the proportional rates?

The Witness: They have applied the proportional rates.

By Mr. Belnap:

Q. I meant applied, sir.

A. Exhibit No. 32, Barge No. 745, was a barge of grain which we purchased from Lowell-Hoit & Company. After the barge was received at our elevators and the cargo outturn weight ascertained of the Weighmaster's department, Lowell-Hoit & Company billed on us for the grain.

Q. Now, you are talking about the purchase price of the grain?

A. I don't know anything about the price.

Q. I mean the payment for the grain itself, or are you talking about the charge?

A. The payment for the grain; they billed us for the value of the grain, with the original bill of lading attached [fol. 2185] to their invoice. Then several days later we would receive from them a paid original expense bill covering the freight aboard this barge. This bill would already be recorded with the Central Inspection and Weighing Bureau, as is customary in purchasing grain through commission houses.

By Exam. Taylor:

And Lowell-Hoit is a commission house?

A. Yes, sir. So after being received by us it was merely necessary for us to put it in our files until such time as we wanted to make use of it.

By Mr. Belnap:

Q. On that particular expense bill, did Norris Grain Company pay the transportation charges indicated on that expense bill?

A. No, sir.

Q. You just simply received the document which was a receipt showing that they had been paid?

A. That is right.

Exam. Taylor: May I ask a question: are you familiar with Rule 37 of B. T. Jones' ICC 3204, requiring certain certificates as to transfer of tonnage or ownership, especially paragraph B thereof, paragraph B reading, "Where a change of ownership of commodities in the same house is by a bona fide sale from one party to another, the following endorsement shall be made: the tonnage represented by this freight bill, blank, paranthesis, insert here name of house, has been sold by blank to blank; date shown." This bill does not show any of that information.

[fol. 2186] A. That is a copy and would not show that information; but it is customary in all commission houses, when providing original paid expense bills that they endorse it over to us on the reverse side. That endorsement is shown on the original expense bill, not on the copy.

By Exam. Taylor:

Q. Exhibit 32 is not complete?

Mr. Belnap: I will have to ask Mr. Cole about that; Mr. Cole offered the exhibit.

The Witness: I might add, Mr. Examiner, that about 99 per cent of the Commission houses do not follow that wording; they merely have a stamp that shows after the order of Norris Grain Company; and then a stamp shows the Commission house's name underneath it.

By Exam. Taylor:

Q. That would be a substantial compliance with the rule?
A. Yes.
Q. Exhibit 32 as reproduced in this record does not show either on its face or on the back——
A. Those exhibits are only copies.
Q. Where are the originals?
A. The originals are retained by us in our office; we have them.

By Mr. Belnap:

Q. You mean to say that the copy of that bill filed with the Central Inspection and Weighing Bureau does not carry that endorsement, that only the original you retain [fol. 2187] carries it?
A. That is right; that is because the railroads recognize only the original as negotiable.

Mr. Belnap: Mr. Examiner, exhibit 32, I think, was offered by Mr. Cole. If you would like to have us, we would be glad to supply a copy of the original of that bill, so that you can see that stamp.

Exam. Taylor: Well, if the witness states that a substantial compliance has been made with Rule 37 of the Jones tariff referred to, and then the respondents are willing to accept that without further verification, it is all right with me.

Mr. Cole: According to what the witness just stated, exhibit 32 as it was introduced is a true copy of the information on file at the inspection bureau.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

By Mr. Belnap:
Q. That is correct, is it not?
A. It is.
Q. But you have a copy of that freight bill which has an endorsement on it?
A. Yes, sir.
Q. And the one you have is the original?
A. Yes, sir.

Q. Is your handling of ex-barge billing in respect of this matter of endorsement precisely the same as the way you [fol. 2188] handle railroad inspection bills?

A. That is right.

Q. Including bills on the Rock Island Railroad?

A. That is right.

By Exam. Taylor:

Q. From that, do we understand that you can use John Jones' billing outbound on all-rail inbound shipments, and outbound; you do not have to show ownership?

A. Yes; the receipt by us of the original bill of lading proves our ownership. Insofar as the transit operation of an elevator is concerned, the operator of the elevator is the custodian of all the live tonnage, and uses same out according to his desires.

Exam. Taylor: All right.

Mr. Belnap: I do not believe I got the purport of your question about the John Jones, Mr. Examiner.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Mr. Belnap: I understand, Mr. Examiner, your point in saying John Jones was that the inspection bureau has a document on file with it showing Lowell-Hoit owns the grain?

Exam. Taylor: Yes.

Mr. Belnap: And the witness said that is true, both on ex-barge and ex-rail grain,—the endorsement only on the original.

Exam. Taylor: Yes, which the inspection bureau does [fol. 2189] not hold.

By Mr. Belnap:

Q. At the time that bill was registered with the inspection bureau was the endorsement on the back of the original, was the inspection bureau stamp on it?

A. It was.

By Exam. Taylor:

Q. On this Lowell-Hoit bill?

A. Yes, sir; I presume it was.

Q. Well, we want the fact; we do not want you to guess at it.

A. Well, I cannot say when they put the stamp on, either before or after it was recorded.

Q. I understand you to say in your previous testimony that Lowell-Hoit & Company had presented the bill for registration of the tonnage?

A. Yes, sir; they did.

Q. How could the stamp have been on the back of the bill, then if they were the owners at that time; and you say now the stamp when you bought the grain was on the reverse side of the bill.

A. No; when we pay the draft of Lowell-Hoit & Company the grain automatically belongs to us.

Q. And the stamp is put on the back of the bill?

A. No, sir; not until several days later, when they are able to get a paid expense bill from whomever they get it from in their office, they take the original and a copy down to the Central Inspection and Weighing Bureau who then puts their recording stamp on it; that is two separate operations.

[fol. 2190] Exam. Taylor: Is that clear?

By Mr. Belnap:

Q. You could not state of your own knowledge that at the time Lowell-Hoit & Company took it down there it had the endorsement on it, could you?

A. I don't know what happened to it, until it came into my possession.

Q. But you did say that is the same as the ex-rail billing is handled?

A. Yes, sir.

Q. When you buy grain from a commission house?

A. Yes, sir.

Q. When it comes to reshipping that tonnage and claiming a proportional and reshipping rate, do you have to submit that original bill, or does the inspection bureau operate on the basis of the copy which they have on file?

A. They operate on the basis of the copy which they have on file.

Q. The records you keep are open to their examination, however, are they not?

A. That is right.

Q. Is this bill with the endorsed stamp on it one of the records which you are required to keep and do keep under the provisions of the transit tariff?

A. That is right.

Q. On what basis was the grain bought, shown in exhibit 32?

[fol. 2191] A. I cannot speak as to how it was bought.

Q. I don't mean the price paid for it?

A. It was bought delivered Chicago.

Q. So that Norris had nothing to do with the freight charges on that shipment?

A. No, sir.

Q. Since it was bought delivered? Now, will you take up the next one, please.

A. Exhibit No. 33 is Barge No. 4, from Henry, Illinois, Henry, Illinois being one of our stations.

By Exam. Taylor:

Q. What do you mean by stations, one of your elevators?

A. Country stations, country elevator.

By Mr. Belnap:

Q. That was your grain at the time of shipment?

A. That is right. The elevator at Henry belonging to us, and all the grain therein. We would advise Mr. Mechling to spot a barge at the elevator, and after it is loaded our elevator superintendent would make out a bill of lading which would be signed by Mr. Mechling.

Q. Mechling personally, or the shipper of the boat?

A. Either by him or one of his agents; I don't know just whom. And one being pushed up alongside of our elevator at South Chicago, we would unload the grain; and then the next day upon the receipt of the accurate weights from the [fol. 2192] Weighmaster's department we immediately make out a statement from Mr. Mechling, attach our check with the freight thereto.

Q. This is after the grain is unloaded?

A. That is right. Then, we would take two copies of the barge freight bill which is made out in our office to the Central Inspection and Weighing Bureau, and they would record it the same as they had this previous barge from Lowell-Hoit & Company; it would not be necesary to en-

dorse the reverse of this, because the grain would belong to use from start to finish.

Q. Do you make them out on a supply of blanks supplied to you by A. L. Mechling?

A. We do, in full agreement with Mr. Mechling.

Q. Do you show on that expense bill the amount of freight charges paid?

A. No, sir; for convenience, perhaps, we just show it prepaid. When this barge business first started coming into Chicago in large quantities, we experienced difficulty with various country elevator operators in getting them to appreciate the value of an original barge freight bill. So as that inconvenience was considerable in living up to Rule 19 of transit tariff 413-K we ultimately made an arrangement with Mr. Mechling to handle the transaction in this manner: by marking it prepaid, instead of showing the rates and the amount, it eliminates the necessity of sending the freight bill back and down into the country to be accepted. [fol. 2193] Q. Do you have a record in your office, which you keep, which shows your statement to the A. L. Mechling Barge Line, and the amount of freight charges you paid?

A. We do.

Q. Is that one of the records which is at any time open to the inspection bureau?

A. It is.

Mr. Cole: I do not understand why it would be necessary to send a freight bill back down to the country for signing. You mean to Joliet, or the origin point?

The Witness: To where—yes, to Joliet now, yes. If we made a freight bill out in our own office and extended the rate and the amount and attached our check thereto, we would have to send both to him for receipt. But under the arrangement we have at the present time, we handle it as I have just mentioned.

Mr. Cole: I didn't understand that, how you handle it now.

Mr. Belnap: Let us go off the record.

Exam. Taylor: Off the record.

(Discussion outside of the record.)

Mr. Cole: There are four of these expense bills that they have made a part of the record here, as exhibits 33, 34, 35, and 36.

[fol. 2194] Mr. Belnap: He is going to take each one up in turn. He is describing 33.

Mr. Cole: All right; well, 33, then: from what you have just said, I understand that the freight charges on that shipment were paid after the shipment was unloaded at the destination.

The Witness: That is right.

By Mr. Cole:

Q. When the expense bill was stamped on it, or written on it, "Prepaid?"

A. Prepaid.

Mr. Belnap: He said that.

Q. I understand that prepaid means something paid before the movement took place; I was wondering how that word prepaid complies with my understanding of what prepaid means. Why did they use the word prepaid there?

A. I explained that just a minute ago.

Mr. Belnap: Tell him over again.

The Witness: We used the word prepaid instead of extending the amounts out, to eliminate the necessity of sending the original barge freight bill back down into the country to be receipted, for our own convenience.

By Exam. Taylor:

Q. You mean back down to Joliet?

A. Yes, sir.

Q. This particular freight bill that we are talking about now, exhibit 33, shows that the prepaid is only upon the [fol. 2195] corn and oats and not upon the beans?

A. No, that being typewritten it is meant to cover the whole thing.

Q. The brackets are only on the two items;——

Mr. Belnap: The one they sent me shows the brackets on all three items. Now, if we are clear on that one, we can go to the next one.

Exam. Taylor: The weights shown on exhibit 33 are in pounds, aren't they; they are not in bushels?

The Witness: They are in pounds; yes, sir.

By Mr. Belnap:

Q. Are those the out-turn weights?
A. Out-turn weights.

By Exam. Taylor:

Q. What prevents showing the rate that was paid on these shipments? Why shouldn't the rate be put in there—any particular reason?
A. No, sir; just for the reason that I have mentioned.
Q. Do you know what the rate was that was paid on this shipment from Henry?
A. They are the rates that Mr. Mechling gave in his testimony.

By Mr. Belnap:

Q. The same rate shown in Mr. Schimmel's exhibit 67?
A. That is right.

Exam. Taylor: Go to the next one now.
The Witness: Exhibit No. 34, Barge No. 7, from Chillicothe, Illinois; this also is one of our country stations, [fol. 2196] and the grain loaded in the barge belonged to us at point of origin. This is handled in the same manner as the preceding exhibit, except that it is on a barge bill that shows Sheffield, Illinois, as Mr. Mechling's address. That used to be his address; I also believe his home was there several years ago. And a man in our office that makes it up happened to strike an old block which he had in his possession.
Q. You mean an old block of forms?
A. That is right; exhibit 35, Barge No. 1108 from Paytonville, Illinois, was grain purchased from Finnegan Grain Corporation by us on a delivered Chicago basis; and also put on one of Mechling's Sheffield, Illinois barge invoices.

By Exam. Taylor:

Q. Barge bills?
A. Barge bills; yes, sir; this being handled by the A. L. Mechling Barge Line, we handled it in the same manner as we handled grain coming from our own stations in the country. First is the issuance of the bill of lading—in this case, the Finnegan Grain Corporation would furnish us

with the original bill of lading, which would come in our possession after we had paid him for the grain.

By Mr. Belnap:

Q. As far as the freight charges are concerned, you do not pay those, do you, for your own account; but you do pay them for Finnegan's account.

A. We deduct the amount of freight for Finnegan's grain receipts, and then send Mr. Mechling his freight check from [fol. 2197] our office, and then record and handle the barge freight bill according to the preceding exhibits.

Q. That figure shown on there, 1,546,290 is pounds?

A. That is the out turn weight in pounds.

Q. All right.

A. Exhibit No. 36 is an identical case, and was handled precisely as exhibit 35.

Q. From what points on the Illinois River has the Norris Grain Company received grain during 1939?

A. Morris, Ottawa, Henry, Hennepin, Chillicothe, Lacon, Pekin, Havana.

By Exam. Taylor:

Q. Would you include Paytonville?

A. Yes, sir.

By Mr. Belnap:

Q. And what barge lines have been utilized in the transportation of that grain?

A. The A. L. Mechling Barge has been used exclusively.

By Exam. Taylor:

Q. Just a minute, this last statement you made, that you used the Mechling Barge Line exclusively,—I noticed on your exhibit 32 the bill is Allied Barge Corporation.

A. I meant, Mr. Examiner, that where the Norris Grain Company transports its own grain it uses Mechling Barge Line exclusively.

By Mr. Belnap:

Q. Complete that, then; what you use when you purchase grain from others, what transportation is used in the trans-
[fol. 2198] portation of grain?

A. When we purchase grain from others, the original owners of that grain will transport it in whatever barge line they have their agreements with and choose to ship it over.

Q. What barge lines have been used in 1939 in the transportation of grain of Norris Grain Company, which Norris purchased through others?

A. I don't believe there has been any except the Allied Barge Corporation.

By Exam. Taylor:

Q. That is all you had to do with it, you just bought it after it got up here?

Exam. Taylor: Very well.

By Mr. Belnap:

Q. That is, that purchase would be before the arrival of the grain, would it not?

A. Those contracts are usually made on the basis of what they call to arrive, made on the basis of 10,000, 15,000, 25,000 bushels at a time, and the Commission house would purchase against that to arrive contracts.

Q. Now, will you turn a moment to your exhibit 80; does this exhibit show all the lines of railroad and all the stations from which lake locals are presently maintained to Chicago?

A. It does.

Q. Have you made a check to determine, according to individual railroads, how many miles of line are involved in that lake local territory?

[fol. 2199] A. Yes, I have.

Q. Will you please state it for each railroad, the number of miles and also the number of stations?

A. The Elgin, Joliet & Eastern have 98 miles in this territory, serving 17 stations. The New York Central and the Michigan Central combined have a total of 23 miles serving 49 stations. The Wabash Railroad, 95 miles, serving 24 stations. The Alton Railroad, 149 miles, serving 38 stations. The Santa Fe, 112 miles, serving 28 stations. The Chicago, Burlington & Quincy, 400 miles, serving 101 stations. The Chicago & Eastern Illinois, 55 miles, serving 17 stations. The Chicago, Great Western, 64 miles, serving

19 stations. The Chicago & North Western Railroad, 210 miles, serving 53 stations. The Rock Island Railroad, 124 miles, serving 25 stations. The Illinois Central Railroad, 204 miles, serving 53 stations. And the Chicago, Milwaukee, St. Paul & Pacific Railroad, 220 miles, serving 48 stations.

Q. Mr. Rich, will you please look at Mr. Schimmel's exhibit 76; are you familiar with the adjustment of rates shown on that exhibit?

A. I am.

Q. Are the rates there indicated as lake proportionals so termed in the tariff in which they are published?

A. They are.

Q. Some years ago was there in effect from a large por-
[fol. 2200] tion of Illinois a rate of 6.5 which were termed lake proportionals, and which have a similar application shown in that exhibit?

A. There were.

Mr. Enoch: Where are those now.

By Mr. Belnap:

Q. They were termed lake proportionals in the tariff, were they?

A. Yes.

Q. As I understand it, they were simply rates which were lower than the local rates, provided that grain was reshipped from Chicago via lake?

A. The general application, as I remember it, read so that the proportional or specific to Chicago would also apply outbound via lake.

Q. And a higher rate would be in effect on a local movement to Chicago?

A. From points where the flat local rate was higher than the specific; yes, sir.

Q. Referring again to Mr. Schimmel's exhibit 76, do the tariffs indicated on that exhibit as authority for the lake proportionals there shown provide by the terms of the tariffs themselves that the rates contained therein will be subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission?

A. They do.

Q. Will you give the tariff items?

[fol. 2201] A. Chicago & Eastern Illinois tariff 600-B, Rule No. 150; Chicago, Milwaukee, St. Paul & Pacific tariff 15165-C, Rule No. 50; and Illinois Central tariff 1537-K, Rule No. 160.

Q. As to grain which moves into Chicago from stations where the local rate to Chicago is higher than the lake proportional, what is paid at the time the grain is delivered into elevators at Chicago?

A. Upon receipt of the grain into an elevator at Chicago, the flat local rate to Chicago is paid.

Q. Is the billing then registered with the inspection bureau?

A. It is.

Q. Now, in the case of a reshipment of that rate by lake, do you get your money back by complying with such rules as are applicable in the transit tariff; I mean, get a refund down to the basis of the lake proportional.

A. We do. The mechanics of the operation is that we cancel the flat local with the Central Weighing and Inspection Bureau, showing the destinations of the steamer and the name of the steamer on which it is applied; and in due course they return to us the original paid freight bill, endorsed on the reverse side of which will show the name of the steamer upon which it was applied and the amount of the refund which we are entitled to. We then file our claim in the ordinary manner with the freight claim agents of the various railroads.

Mr. Belnap: That concludes Mr. Rich's direct.

Exam. Taylor: Is there any question by protestants? [fol. 2202] Mr. Macaulay?

By Mr. Macaulay:

Q. Mr. Rich, do you know how long you have used barge billing from points along the Illinois waterway in the manner you have described?

A. I don't know the exact time, I think it was somewhere in 1935.

Q. You don't know whether any shipments were received in 1934?

A. There were shipments received.

Q. Do you know how those were handled?

A. I do not recall, no. How do you mean, how they were handled?

Q. Well, were the freight bills similarly recorded with the Central Weighing and Inspection Bureau and reshipping rates accorded on those freight bills in 1934?

A. I am not sure in my mind.

Q. Do you know of any instance when they were not accorded that treatment?

A. I think that they were recorded form the start, and that the proportional rate was accorded the outbound application from the start; but I am not sure.

Q. You are sure that was 1935?

A. Yes.

Q. And you believe it is true before that?

A. I do.

Q. You referred to exhibit 76, when you made the statement that it was necessary to pay the flat local rate in, and [fol. 2203] then if the grain went out via lake a refund was granted; is that true from all of the other intrastate points as set forth in here, exhibit 80?

A. No; the points set forth in exhibit 80 are the intrastate local rates.

Q. Do you then pay the 5-cent local rate from Morris, or do you pay the 9½ cent Illinois proportional rate, subject to the reduction if it goes out via lake?

A. The 5-cent rate is paid at Chicago.

Q. If that grain is consumed in Chicago, and has no further destination, is any further requirement made for payment of the balance of the lake local rate?

A. There is not.

Mr. Macaulay: That is all.

Exam. Taylor: Is there any other examination by respondents? (No response.) Cross-examine. Mr. Cole?

Cross-examination.

By Mr. Cole:

Q. Mr. Rich, when you were talking about exhibit 33, I asked you as to that word on there 'prepaid;' will the answer that you gave me as to exhibit 33 apply as well to exhibit 34, exhibit 35, and exhibit 36, all of which show the word 'prepaid?'

A. That is right.

Q. They were all handled in the same way?

A. That is right.

[fol. 2204] Q. And none of the charges were in fact paid before the transportation took place?

A. They were not paid at the point of origin, if that is what you mean.

Q. Well, they were not paid before the transportation took place either, were they?

A. No.

Q. This billing of rye that is represented by exhibit No. 27, that was shipped in a lake steamer from Duluth down to Chicago; do you know where that rye originated?

A. No.

Q. You don't know where it came from behind Duluth?

A. No.

Q. Do you know whether or not it originated in Duluth?

A. They do not grow rye on the streets of Duluth.

Mr. Cole: That is all I have.

Exam. Taylor: Mr. Day? Mr. Enoch?

By Mr. Enoch:

Q. Mr. Rich, has the Norris Grain Company any financial interest, direct or indirect, in any barge line operating on the Illinois River, in 1938 or 1939?

A. No, sir.

Mr. Belnap: Mr. Examiner, Mr. Mechling, my recollection is, said that he had borrowed some money from Norris; I don't know whether that is embraced within your question or not, but if that sore of transaction is, of course, the [fol. 2205] evidence of Mr. Rich is inconsistent therewith. I don't know whether Mr. Rich is informed about interest——

The Witness: I don't know the financial setup of the Norris Grain Company, or any financial dealings made.

Mr. Belnap: In a case of that character, Witness, I suggest you ought to state you are not familiar with it, rather than tell what the fact is.

By Mr. Enoch:

Q. Does the Norris Grain Company or any of its officers have any stock in any barge line operating on the Illinois River, in 1938 or 1939, if that barge line happens to be a corporation.

A. The stock of the Illinois River Packet Company is owned by Mr. Norris; but I know nothing of the financial dealings of it.

Q. Is that the only situation of the kind about which I inquired, with which you are familiar?

A. That is right.

Q. Referring to your exhibit 81, does it show for the period indicated that all-rail receipts of corn moved out via the lake?

A. Not the total receipts.

Q. Pardon me?

A. Not the total receipts. You mean that total percent column? That total percent applies to the disposition and not the receipts.

[fol. 2206] Q. Does it show that all-rail receipts of intrastate non-transit corn moved out via lake?

A. Of 164,152,800 pounds received, the figures opposite that figure is what went out via lake; yes.

Q. You mentioned the points along the Illinois River from which you had received grain, beginning with Morris, Ottawa, Henry, and so forth; is that all corn and soya beans, mainly?

A. No; the exhibit here shows just what kinds of grain it was: amount received, wheat, 23,000,000 pounds; corn, 275,000,000 pounds,——

Q. I confined it to these origin points; you would not get any wheat, would you, from these points?

A. Certainly.

Q. Were the points you named, the points from which you got grain as shown on exhibit 81, as far as receipts of barge grain are concerned?

A. The points of origin are not shown there.

Q. These are the points of origin?

A. That is right.

Q. From which you got the barge grain that is shown on exhibit 81?

A. That is right.

Q. You said sometime ago that there were some tariffs that referred to some rates as lake proportionals; were you speaking of western lines' tariffs?

[fol. 2207] A. Rates which were in effect in previous years?

Q. Yes.

A. Yes, sir.

Q. When was that?

A. I am not sure of the date; I think they were taken out in 1937. July 1, 1935.

Q. On this Indiana grain that you described moving out via lake, is that transited at Chicago?

A. The freight bills are recorded for transit, but the outbound tonnage is surrendered against an outbound steamer.

Q. Do you consider that that grain was transited at Chicago?

A. Yes, sir.

Q. Do you consider that this ex-barge grain which after its arrival moves out and has been permitted to get the proportional rates, has been transited at Chicago?

A. Yes, sir.

Mr. Enoch: That is all.

Exam. Taylor: Are there any other questions of this witness? Anything on redirect, Mr. Macaulay?

Redirect examination.

By Mr. Macaulay:

Q. Referring to your exhibit 27, you stated that that covered a cargo of rye from Duluth, I believe?

A. That is right.

Q. Have you received similar cargoes of other types of [fol. 2208] grain than rye from Duluth, and made a similar application?

A. I don't remember anything but rye coming down from Duluth. We had two cargoes of barley come down from Ft. William in 1939, that is shown on exhibit 81.

Q. You handled no wheat from there?

Exam. Taylor: From where?

Mr. Macaulay: From Duluth.

The Witness: I do not recall any.

By Mr. Macaulay:

Q. Have you under a similar type of bill of lading received any grain from any points other than Duluth?

A. Yes.

Q. On the lake, say?

A. All the origin points?

Q. Yes, that you received from other origin points than Duluth?

A. 61,937 pounds was received, grain from foreign countries,—from Montreal.

Q. What types of grain, Mr. Rich?

A. Corn, rye; I think that is all we received.

Q. Those bills of lading were similar to exhibit 27?

A. Yes, identical.

Q. And you dealt with them similarly as you described that you dealt with exhibit 27?

A. That is right.

[fol. 2209] Mr. Macaulay: That is all.

By Exam. Taylor:

Q. Mr. Rich, getting back to the question that Mr. Enoch asked you, I believe you said that Mr. Norris owned all of the stock of some river packet company?

A. Years ago the Turner-Hudnut Grain Company of Pekin, Illinois owned and operated the Illinois River Packet Company through Peoria and Pekin.

Q. Where did they operate it?

A. Operating to termini in New England and Trunk Line destinations, with rates on file with the Commission; and that packet line was acquired by the J. Nusbaum Grain Corporation; and when they went out of business, I think in 1934, I think it was,—we acquired it with all the rest of their properties.

Q. Where does this packet line operate from and to?

A. From the river landings.

Q. On the Illinois River?

A. On the Illinois River, to Pekin; and it has joint through rates in conjunction with various eastern railroads on file with the Commission.

Q. Was all the business handled under these joint through rates?

A. Yes, sir.

Q. No contract rates?

A. No, sir.

[fol. 2210] Q. Common carrier, in other words?

A. Yes, sir.

Mr. Cole: I have one more question.

Exam. Taylor: Mr. Cole.

Recross-examination.

By Mr. Cole:

Q. Mr. Rich, Mr. Macaulay asked you if the grain that came in from other lake origins was all handled in the same way that you have described covering your exhibit 27; do you mean that it was handled with the inspection bureau as you described for exhibit 27?

A. That is right.

Q. Was that all you meant when you answered him?

A. That all the mechanics had been; the receipt of a lake bill of lading, or an ocean bill of lading was handled in precisely the same manner as exhibit 27.

Q. And on the inbound recording?

A. That is right; and the outbound also.

Q. Do you remember now where the outbound tonnage went to, whether that went to trunk line territory or Central Freight Association territory; where that went, and—was it grain products out, a large portion of it?

A. A large portion of it went down to Peoria via the Rock Island and the Wabash, and the Alton. And I remember some going to Paris, Illinois, via the Big Four, New York Central. In fact, there was considerable amounts of it [fol. 2211] went as far west as points beyond Kansas City, and the Missouri River crossings—on the basis of the proportional rate.

Q. On the basis of what proportional rate?

A. Proportional rates as set forth in Western Trunk Line tariff 332-B.

Q. Was this the proportional rate that we talked about from Chicago east to Central Freight Association territory, and east to Trunk Line territory; were either one of those rates applied to a shipment that moved from Chicago down to Kansas City or points west of Kansas City?

A. I don't think I followed your question.

Q. We have been talking all along about proportional rates applicable east of Chicago.

A. That is right.

Q. That is, ex-Northwest, and the proportional rates; that is the rates we have spoken of as being applicable to Central Freight Association destinations, and other rates applicable to Trunk Line destinations?

A. That is right.

Q. Now, the material that may have moved into Chicago via lake and then moved to the western destinations, did you use any application of those proportional rates applicable to Central Freight Association territory; or would you find the rates that control the movements to western territory in some other set of tariffs than we have?

[fol. 2212] A. Well, there is a question; the Western District, we have a different tariff. But, as I recall it, there was considerable of it shipped to Central Freight Association territory. I do not recall if any went to Trunk Line.

Exam. Taylor: And the reason for the movement of the grain was because of the shortage of feed——

A. Yes, sir.

By Exam. Taylor:

Q. In the destination territory?

A Wisconsin received over 3,000 cars from us alone.

Exam. Taylor: Is there anything further? Mr. Macaulay?

Redirect examination.

By Mr. Macaulay:

Q. Did any of that go to Eastern Trunk Line territory, or Central Freight Association?

A. I answered that; considerable of it went to Central Freight Association, but I do not recall if any went to Eastern Trunk Line.

Q. And the only shipments that you know, other than shipments from Duluth, that you received via lake is the stuff that came in from foreign countries during the drought; is that correct?

A. No; from time to time there has been grain brought down from Fort William and Port Arthur, and from the Georgian Bay territory there has been grain brought back.

Q. And what disposition was made of that?

A. We used the ex-Northwest application to Central Freight Association, and the Chicago reshipping rate to [fol. 2213] Trunk Line territory.

Q. Was that rye, or some other kind of grain?

A. No; from Port William and Fort Arthur it was either

wheat, barley, or rye; and from other origin points such as the Georgian Bay territory it would be corn.

By Mr. Belnap:

Q. I would like to ask about this movement to the west, of this ex-lake grain; you say it moved on the proportional rates?

A. Yes, sir; Western Trunk Line tariff 332 provides a proportional rate application to a great many destinations set forth in that tariff; not to all of them; on the basis of the proportional rate.

Q. Those are named proportional rates in the tariff?

A. Yes, sir.

Q. And the tariff provides that they will be applicable on ex-lake grain?

A. That is right; a specific provision.

By Exam. Taylor:

Q. And it also applies ex-rail?

A. Yes, sir.

Q. Does it apply ex-barge?

A. No, sir; it specifically mentions ex-lake.

By Mr. Brown:

Q. And those rates apply from all the lake ports, Milwaukee, Green Bay, Duluth?

A. That is right.

Q. Not the same rates, but similar rates?

[fol. 2214] A. Similar rates apply from those re-shipping points.

By Mr. Belnap:

Q. Is that true of all of the rates, or just the ones Mr. Brown referred to?

A. I think it applies from Chicago, Milwaukee, Green Bay, Manitowoc, Duluth, and Superior.

Q. Now, when you applied those ex-lake rates over Mr. Enoch's line to the west, did you register billing with the inspection bureau?

A. The tonnage was registered with the inspection bureau and handled in precisely in the same manner as exhibit 27.

Q. Is this bureau in Chicago the joint agent of both eastern and western lines?

A. They are.

Q. And the billing was made subject to the requirements of the transit tariff, as to policing, just as in the case of your eastbound shipments?

A. That is right.

Q. Was there any difference between them?

A. The only difference in the application of the Western District as against the Eastern District is that the western railroads have not given the Central Inspection and Weighing Bureau the authority to show their freight rates thereon.

Q. You mean as far as the billing is concerned?

A. That is right.

Q. On the outbound?

[fol. 2215] A. That is right.

Mr. Enoch: I want to get in on this, too. Will you speak louder.

By Mr. Belnap:

Q. What do you mean, the Western Lines, have not given the inspection bureau the authority to show their rates?

A. At Chicago here we have a split territorial application; when we make shipments to the west we use Western Trunk Line tariff 331; I don't know what the ICC number is.

Q. That is the Western Transit tariff?

A. That is the Western Transit tariff under which the shipments move, providing for all the policing.

Q. And the western proportionals are made subject to the requirements of that transit tariff?

A. They are.

Mr. Enoch: Which one?

Mr. Belnap: Western Trunk Line—I think we should advise them the ICC number on that; will you get that?

The Witness: I will.

Mr. Enoch: You do not mean that the Denver & Rio Grande Western, or the Union Pacific, the Great Northern, or the Northern Pacific are members of this Central Inspection and Weighing Bureau, do you?

The Witness: Only the railroads shown as participating

carriers on page 2 of No. 413. I can call them off to you, if [fol. 2216] you want.

By Mr. Enoch:

Q. No; well, outside of the eastern roads, it is the Illinois roads to the west?

A. Well, the Rock Island is a western road; so is the St. Paul.

Exam. Taylor: What Mr. Enoch meant was roads reaching Illinois territory?

The Witness: Yes, that is all.

Exam. Taylor: Is that all?

Mr. Belnap: I offer exhibits 80 and 81.

Exam. Taylor: They may be received.

(Protestants' exhibits 80 and 81, Witness Rich, received in evidence.)

Exam. Taylor: Is that all from this witness?

Mr. Belnap: Yes, sir.

Exam. Taylor: We will recess five minutes.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen. Mr. Rich, I have one question as to these freight bills that you put in the record, on the barges.

The Witness: Yes, sir.

By Exam. Taylor:

Q. You show prepaid, and you described how you sent a check down to the country in payment of those charges.

A. Yes, sir.

[fol. 2217] Q. Would it be possible for you to furnish the canceled check, say in ten days, on the freight bills that you have been talking about on this record?

A. The canceled freight check?

Q. The canceled check in payment of those barge freight charges?

A. Yes; yes, we could.

Q. On the ones that you have put in this record.

Mr. Belnap: Just a typewritten copy of the canceled checks?

Exam. Taylor: Well, maybe he could put in the canceled checks.

The Witness: I will find out about that.

Mr. Belnap: I will be happy to have it in.

Exam. Taylor: Just the ones that we have been talking about here; exhibits 27, 32, 33, 34, and 35.

Mr. Belnap: Perhaps, Mr. Examiner, if he brought the canceled check over here,—he probably could do that tomorrow.

The Witness: Two of those exhibits date back to April, 1939; and we probably would have to plow through thousands of checks.

Exam. Taylor: If you have the date, you probably can get right to them. Will you make an effort to do that?

The Witness: Yes, sir.

[fol. 2218] Exam. Taylor: That is all.

(Witness excused.)

Mr. Belnap: While we are still on these general matters as to rates, Mr. Brown on several occasions has made statements as to how matters arose, and why certain things were done; and I think it would be helpful to the record if he were to go over the complete history of both the ex-lake and ex-river application, as a matter of background for the Commission. I would like to have him do that, with particular reference to the various wording in these notes, and how they have been employed.

Exam. Taylor: Well, now, he presented to rebut or change any of the testimony that has come in this case so far, or merely as an explanatory statement?

Mr. Belnap: I doubt whether there is any testimony yet about these notes, except Mr. Tannehill's statement that here is a tariff history.

Exam. Taylor: Any objection to that procedure?

Mr. Brown: I would like to have something to say about it, if you please.

Exam. Taylor: Certainly.

Mr. Brown: If it would be helpful to the Examiner in understanding what has taken place under these tariffs up to the present time, how they have been applied as to ex-lake and ex-barge grain, if the Commission wants that I am [fol. 2219] perfectly willing to give it, based on my knowledge of the history of the thing. But I am not offering my-

self as a witness, and I do not want to be a witness. I am perfectly willing to do whatever is helpful.

Mr. Belnap: I am perfectly willing myself to take Mr. Brown's statement of these things just as if it was sworn testimony, if that suits everybody else.

Exam. Taylor: I would like to hear if the respondents have any comments on the subject.

Mr. Enoch: I think if Mr. Brown takes the stand he ought to be called on behalf of some party, just the same as any other witness.

Mr. Belnap: I will be quite glad to call him, and be bound by whatever he says.

Exam. Taylor: Very well.

J. S. Brown, was sworn and testified as follows:

Direct examination:

The Witness: I understand I am going to explain what I know about the history east of Chicago, ex-barge and ex-lake rates; that, and nothing else.

Exam. Taylor: And to stand cross-examination.

Mr. Brown: On that, yes.

By Mr. Belnap:

Q. State your name.

A. My name is J. S. Brown. I am Manager, transporta- [fol. 2220] tion department, Chicago Board of Trade; and have held that position for over 25 years. Prior to that time I was General Freight Agent of the Illinois Central Railroad; and I think I am fairly familiar with the application of the rates east of Chicago, from Chicago to points east on so-called ex-lake and ex-river grain. And I wish to give, parenthetically, I see some tariffs have been set before me here, but I do not want to look at them or examine them unless it becomes necessary. There has never been, in my 25 years' experience in the Chicago Board of Trade, any question about the application of definite reshipping rates from Chicago on grain that came in to Chicago via lake. I think I am safe that if you go back to the original issue of Tariff 245-G, issued by B. T. Jones, present ICC No. 3356, you will find that there has been and still

is a definite expression that the reshipping rates therein will apply on ex-lake grain. The application will differ probably in two respects: first, the point of origin not being known, the rate that is in effect at the time that the grain originates by rail is not used in determining what rate shall be applied on the day the ex-lake grain is reshipped. In other words, on all the rail grain the reshipping rate in effect from Chicago that was in effect the day the grain originated, for example, in Iowa, is the rate that is applied on that grain, even though the rate from Chicago in the meantime has been changed. On ex-lake grain, becaues the original point of origin is not known, the rate in effect from Chi-
[fol. 2221] cago on the date of reshipment of the ex-lake grain govern.

Q. Reshipment from Chicago?

A. Yes. I would illustrate this way: if a cargo of ex-lake grain came in here before the 5 per cent increase took effect in March, 1938, and the grain was not shipped out until after March, 1938, it would take the higher rate. The other exception that comes to mind is this: that under the various notes describing the territory and the application of the rates there is provision of the one-factor through all-rail rates or combination of the rail rates must not be less than the local rate from Chicago in effect at the time the grain originated. Explain it this way: That the Chicago group today, which includes Kankakee and Milwaukee and Joliet and a few points, to New York, is 9½ cents higher than the reshipping rate, the reshipping rate being the same as the proportional rate, irrespective of the origin back of Chicago. Under the present application on all-rail traffic 8½ cents must have been paid into Chicago before you get the reshipping rate. If less than 8½ cents has been paid into Chicago, that difference must be made up before you can get authority from the transit bureau to apply the reshipping rate. Those two particular instances are the only ones I can remember that distinguish application of rates on ex-lake grain from all-rail grain.

Q. That 8½ cents minimum inbound, is that only in con-
[fol. 2222] nection with all-rail shipments?

A. Yes; it never has been used and never was intended to be used, and I don't think the notes require it to be used on ex-lake grain, or ex-water grain.

Q. The note that you refer to is that phraseology which reads that in no case shall the combination through rate to

and from the reshipping point be less than the local rate from the reshipping point to destination.

A. Yes, and that combination rate intends to and refers to combination of rail rates.

Q. And that has been the application of that language over a period running back to the beginning of your memory of it?

A. Yes, sir.

Exam. Taylor: Regardless of the tariff rule on the subject?

The Witness: I don't think there is any contrary rule, unless you may say that the ex-barge has a definite application of its own in this tariff 241-G. That is the Eastern Trunk Line tariff. Now, the Central Freight Association territory, the first agency tariff; that is, the tariff issued by Mr. B. T. Jones for account of all of the eastern carriers, did not take effect until sometime in June, 1935. The carriers have been working on that tariff, and I think the purpose was not only to pick up the individual tariffs, such as Mr. Tannehill spoke of, of the New York Central Rail-[fol. 2223] road, but to rather dovetail in with the new rates up to Chicago, Peoria, St. Louis, and Milwaukee that were prescribed by the Commission in 17000; those rates became effective July 1, 1935. The Commission made some changes in the rates that affect the so-called equalization, particularly as between Chicago and Peoria from northern Iowa. When the first issue of 535-A was being compiled, it was noticed by Mr. Benson and myself, and particularly by him because he watches the detail, that the application of the individual roads' tariffs was not exactly the same. There had been very little business moved; that is, ex-barge business moved up to the time we were discussing the new 535-A early in 1935. Occasion had arisen before that as to what was the application on barge grain coming to Chicago. It was a small amount; but a firm that is no longer in business raised the question as to whether under the application of the individual roads' tariffs he was not entitled to the reshipping rate applicable on Illinois traffic, because the traffic originated in Illinois. It is my recollection that some of the individual railroads agreed with the shipper that that was so. And the Bureau passed the billing on that basis. But when Jones compiled his new tariff he ap-

parently found this difference in the application, and it came to our notice it was going to be compiled; and we said that we want to know how you are going to do it. And the conclusion reached apparently was that they would treat all ex-water grain the same. And you have got your [fol. 2224] present——

Mr. Enoch: Did you say the conclusion apparently was?

The Witness: Yes, because it resulted in one application to cover all. I think Mr. Benson read this into the record: the caption is "Grain;" and in parentheses, "Northwest;" and the last item is prefixed by a small letter E in a circle, and it reads, "On shipments that arrived via boat lines at Chicago, Illinois, Kewaunee, Mackinaw City, Manitowoc, Menominee, Manistee, and Milwaukee." Now, that established for the first time a uniform application east of Chicago on barge grain and ex-lake grain, and was so accepted at that time by everyone that I know anything about who had anything to do with it. There has never been any question raised that that provision which I have just read did not cover ex-river grain.

Now, the carriers selected the highest rates, or rather the ex-Northwest rates for the ex-barge grain, just as they had previously been applying on ex-lake grain. In order to get unity, the shippers had to accept them; and so far as I know there was only one dissent to that among the Chicago shippers; and he is the same shipper I previously referred to, who is not now in business. That is all I have to say about the history.

By Mr. Belnap:

Q. He thought he still was entitled to the reshipping rate?

Mr. Enoch: What difference does it make?

[fol. 2225] The Witness: Because we had been getting it under the application of the individual road's tariff to Central Freight Association territory prior to the issuance of Jones' 535, he rather thought that we ought to fight for that application in the new tariff.

By Mr. Belnap:

Q. By individual tariffs, you have in mind issues similar to those shown in Mr. Tannehill's exhibit, as preceding the first agency issue?

A. Yes.

Q. Was that the application made under the New York Central tariff shown in Mr. Tannehill's exhibit?

A. Yes; the New York Central tariff was considered as affording reshipping rate, whatever it was, higher or lower, whatever it was from the Northwest on barge grain.

Q. By the New York Central Railroad?

A. That is acquiesced in by the Bureau, and approved by the Bureau.

Q. At the time that the New York Central operated under its individual tariff the note as shown on page 4 of Mr. Tannehill's exhibit 1, which provided for the application of the Northwest proportional on certain grain arriving via boat lines at Chicago, was limited, was it not, by the terms of the note to shipments arriving by boat which originated in a certain defined territory.

Exam. Taylor: You are still talking about Central Freight [fol. 2226] Association territory?

Mr. Belnap: Yes, I am still talking about Central Freight Association territory.

The Witness: Is Group 1 Chicago, do you know?

Mr. Belnap: Yes.

The Witness: Well, that was definitely restricted to what has been referred to here as ex-Northwest origins.

By Mr. Belnap:

Q. That is in connection with the rate applicable on ex-boat corn, to specifically state where that ex-boat corn had to come from, did it not?

A. Yes.

Mr. Enoch: Isn't that all in the exhibit?

The Witness: I want to be sure that you know what I am talking about; I am talking about page 4 of exhibit 1, Item 25-A Northwest, shown as effective May 1, 1924. And I would say under that, that was confined to grain originating in the northwest, Wisconsin being the first-mentioned state. That is not what I referred to; I referred to some other note that gave the reshipping rate on barge grain. Let me see if I have got the thing right: remember, it is a long while since I have seen the tariff. This is the kind of note I referred to which the Chicago shipper claimed he was entitled to have reshipping rate on barge grain, beginning about 1934. This appears on page 3,——

Exam. Taylor: Did you say 1934, or 1924?

[fol. 2227] The Witness: 1934. I never knew it to arise until at the 1934 call of barge men. This note appears on page 3, the note being designated as No. 15-A reshipping. I will only read part of it. This provides that the rates named on certain pages on grain in carloads are reshipping or proportional rates, applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of traffic and rates paid to the reshipping point and will apply only on such traffic when originating at points, except as provided for in Notes 20-A, which lower down is shown as trans-Mississippi River territory, and except as provided in Note 25-A, which is headed Northwest territory. In other words, this note was construed as excluding trans-Mississippi River and ex-Northwest application from Illinois barge grain and applying the reshipping rate, whatever it was generally known, as to grain originating in Illinois.

Q. And that led, as I understand it, to the application of a different rate on ex-barge grain than on ex-lake grain in that period?

A. During that period in 1935, but not by all carriers. Only some applied, as we understand it, the Illinois reshipping rates instead of the ex-Northwest rates.

Q. Then, did you for the Board of Trade insist to the publishing agent when he was getting out his new issue [fol. 2228] that the same rate whatever it might be, should be provided for ex-barge grain?

A. We did not exactly say that; but we wanted an ex-barge application uniform for all the roads east. That could not be had, because there was either a variation in the notes themselves or a variation in the way they had been applied by the railroads individually. And the easiest way for the roads was to throw the ex-barge in with the ex-lake and get a uniform application on both; and that is what exists today.

Q. That was done by Note 40?

Mr. Enoch: Wait a minute——

Mr. Belnap: That is what Mr. Brown contends was done by Note 40.

The Witness: And without dissent from anybody that I know; nobody except this one man who still wanted to hang

on with the reshipping rates; but we did not support him to the extent of having a row with the rails and perhaps get no rates. Now, Mr. Benson, you know, I think, called Mr. Schimmel's attention to a general application of these tariffs which particularly throws you into the exemption, a special application on river grain—yes, this is it: in 535-A, ICC 3300 there is a general application, aside from these notes 40 and 20, and so forth. I will read it——

Exam. Taylor: The exhibit is in the record.

The Witness: No, I am reading from the general appli- [fol. 2229] cation that apparently was overlooked by somebody.

By Mr. Belnap:

Q. You are referring to Item 5, as appears on page 92 of the tariff?

A. Yes, Item 5, application of proportional rates, which is a general application.

Q. I think that has been read in the record, Mr. Brown; that item was read in the record. It shows in substance certain things in general; then it excepts from it rates that are applicable on ex-river, ex-ocean and ex-lake traffic?

A. Yes, in the special application notice; now, tariff 245 ought to have something in it like that too; Note 35, page 105.

Q. That has not been read in the record; will you please identify the item and read it in?

A. I am reading now Item 35 in B. T. Jones' tariff 245-G, ICC 3356, naming proportional rates, among other rates from Chicago to Eastern Trunk Line territory and New England and Virginia cities. The effective date of this tariff is November 15, 1939; but this particular item I am familiar with, and it has been carried in this tariff quite a long while. This is general application of proportional rates: proportional rates as named herein which by their terms are limited in their application to traffic originating at specific points or territories, including rates which are published for application on traffic from beyond 'are applicable only when the entire through movement is performed [fol. 2230] by the rail carriers, or water and rail carriers under rates lawfully on file with the Interstate Commerce Commission or state commissions.' Now, here is the remaining note, separate paragraph: "The foregoing is not

to affect any rates now published carrying provision that such rates are applicable on ex-river or ex-lake traffic or on traffic forwarded by ocean from the port."

Mr. Enoch: Well, that is substantially the same as the previous Note 5, to which you referred?

The Witness: Yes, and that is the saving clause which gives us these special applications on water-borne grain brought into Chicago.

By Exam. Taylor:

Q. To Trunk Line territory?

A. Yes, sir.

By Mr. Belnap:

Q. A similar note to Central Freight Association territory?

A. Yes, sir.

Q. Is it not true, Mr. Brown, that you have to go to the notes to find anything that will pertain to ex-river traffic, as far as the rate application is concerned in these tariffs?

A. Oh, yes; and that item read calls attention to the fact that there are special provisions for ex-water grain rates.

Mr. Enoch: Now, may I ask what your point is there; do you say that because of this last sentence the foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex-river, ex-ocean or [fol. 2231] ex-lake traffic, nullifies the preceding reference and requirement that the proportional rates are applicable only when the entire through movement is performed by the rail or water carriers under rates lawfully on file with the Interstate Commerce Commission?

Mr. Belnap: I think it reads as an exception.

Mr. Enoch: Is that your point? I can read it; I may not read it right,—but is that your point?

Mr. Belnap: If I understand your question, it is.

Mr. Enoch: In other words, this does not require the inbound carrier to have any rates on file anywhere?

Mr. Belnap: On file with the Commission; that is correct.

Mr. Enoch: Anywhere?

The Witness: Oh, yes, on rail traffic, on rail and water traffic, it says.

Mr. Enoch: I am talking about ex-barge.

Mr. Belnap: The ex-lake traffic and the ex-river traffic, in other words, can enjoy the proportional or reshipping rate without the inbound rates being on file with the Commission, as I understand it.

Mr. Enoch: What significance do you attach to the word 'published' there?

Mr. Belnap: 'Published' means contained in the tariff.

The Witness: Published herein.

By Mr. Belnap:

Q. Mr. Brown, I would like to call your attention to the [fol. 2232] first portion of the present Note 40.

The Witness: What tariff?

Q. Of the Central Freight Association tariff.

A. Now, are you talking about the suspended one?

Q. No, no, no; I am just going to talk to you about the present——

A. I am looking at the original tariff, page 83; I am not looking at any supplements, where the language may have been changed.

Q. Very well; you will find in that first paragraph a requirement, do you not, that in no case shall a combination through rate to and from the reshipping point be less than the local rate from reshipping point to destination. Is that similar tc the language which was contained in the individual lines' issues going all the way back to the beginning of the ex-lake movement?

A. Yes, that provision has always been waived; and I think it is waived by that Item 5 that I read awhile ago. I know it has been waived.

Q. That has been considered not to apply to a combination of the lake charge versus reshipping charge——

Mr. Enoch: Just a moment; he said it was waived.

By Mr. Belnap:

Q. What do you mean by waived?

A. Waived by reason of the item that said no application applied. In other words, the provision for a local rate from [fol. 2233] a reshipping point as a minimum relates only to one factor all-rail rates, or a combination of rail rates; it has always be-so construed.

Q. Construed and applied to the actual business moving——

A. That is right.

Mr. Enoch: I want to object to any further interrogation along this line.

The Witness: I am giving you the history of it; that is all I am giving you.

Mr. Enoch: That is all you are intending to do, Mr. Brown; but you are telling him that people have construed these tariffs, and how you construe them.

The Witness: Well, I can say this; that if they had not been construed the way I stated, I would have heard about it a long time ago; there would have been an awful howl.

By Mr. Belnap:

Q. Will you turn to Note 20 in the Eastern Trunk Line tariff, Note 20 of Eastern Trunk Line——

A. I have it.

Q. How long has that note been in an agency issue; has it a similar history to the one you gave for Note 40 in the Central Freight Association tariff?

A. Oh, yes.

Q. That is the note that for several decades, or a similar note, has provided for the application——

A. That is the first part of it; I think this tariff I am [fol. 2233] looking at now has the suspended rule in it. It looks so to me anyway. Yes, this must have the suspended rule in it.

Q. What is that, F or G?

A. I have G here.

Q. You should have F.

A. Unless the original note is restored in a supplement here. I told you ahwile ago I was reading from the original tariff: but I happened to notice that this is not the old rule.

Q. Well, at page 4 of Mr. Schimmel's exhibit in that note when you get to the similar phraseology as regarding the combination, it specifies that rule does it not?

A. Let me read it—yes, as to the requirement for the minimum.

Q. And that is the difference, by those additional words, from the Central Freight Association Tariff Note 40?

A. Provided that is a true copy of the original rule.

Q. That is a photostat, Mr. Brown. I understand from you that the application of the Central Freight Association rule has been the same as if it had those words that Note 40 contains.

A. That is right—the words that Note 20 contains.

Q. Yes, that Note 20 contains. Now, in present Note 20, there is a provision that the rates are applicable on ex-lake shipments as of the dates such shipments leave the lake port; which lake port, as the note is applied, does that refer to?

[fol. 2235] A. Chicago, Milwaukee, or any other port from which there are proportional rates in the tariff to the Eastern territory.

Q. It is the port from which the rail shipment is made, is it not, and not the port where the lake movement originated?

A. Oh, no; no. Because this tariff is a part of that tariff containing proportional rates from Chicago, Milwaukee, and so forth to the east.

Q. Then, the next paragraph of that note?

A. These rates are applicable on ex-lake shipments as of the date such shipments are reshipped via rail from the lake ports named above.

Mr. Enoch: Are you trying to have Mr. Brown say something that it does not say?

Mr. Belnap: Here is an item, it simply says leaves the lake port; it does not say what lake port. I am trying to get what has been the application of the tariff, Mr. Enoch.

The Witness: That has been the wording for a good many years.

By Mr. Belnap:

Q. When it has come to applying those proportionals on ex-river business, what have the carriers done insofar as that matter of date is concerned?

A. Followed the same rule; apply the rate in effect at the date the shipment was made from Chicago.

Q. Are there any rates in that tariff, Mr. Brown, from Chicago which are shown in the rate columns themselves [fol. 2236] as ex-lake rates or are they simply shown as proportional rates?

A. No, there is no special ex-lake column in 245.

Q. How are the rates headed in the ex-lake, for instance Chicago to New York?

A. Well, Chicago is indicated by 100.

Q. Yes.

A. And opposite No. 100 you will find the 26-cent proportional rate from Chicago to New York.

Q. It is headed proportional?

A. No, it just says 100; the numeral 100 will be on the left, and running right from those will be rates to Baltimore and other places showing what the rates are from the station indexed 100; when you go to 100 in the index you will find that it shows proportional rate from Chicago, subject to Note 20, or Note 40, whatever it happens to be. And probably under Note 40 you will find 100-A, and that will be Chicago proper, and the rate will be 8½ cents under rates——

Q. Rates, however, are termed proportional in the note and in the tariff where the rates themselves are found?

A. Yes; I think I can find it right here. I am looking at page 20 of Jones' tariff 245-G; and Chicago, Illinois shows opposite New York Central Railroad in the bracket C proper, group 100, proportional, see Note 20, group 100-A. I had them reversed, that is all.

Q. And when we turn to——

[fol. 2237] A. When you turn to any of the rates you will find opposite 100 A are proportional rates, and opposite 100 are the local rates from Chicago. On page 121, which is headed Domestic Rates on Grain, opposite 100, which is the Chicago group proper, you will find that under the station New York the rate is 34½ cents. Opposite Group 100-A, which is the proportional rate, you will find that under the station New York is 26 cents.

Q. However, that page we find the rates themselves as headed simply domestic rates on grain?

A. That is right.

Q. Where that proportional is applied on a shipment which came in via lake, it is applied as an ex-lake rate, is it not?

A. That is right.

Mr. Belnap: That is all.

Cross-examination.

By Mr. Cole:

Q. The matter that you referred to last, you were talking about the application of the Trunk Line territory in the east.

A. He wanted to know how it is applied, the groups.

Q. The trunk line?

A. All trunk line, Virginia City.

Mr. Enoch: That is right.

Exam. Taylor: Is that all you have, Mr. Cole?

Mr. Cole: That is all.

[fol. 2238] Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Brown, when the increases went on the rates in March, 1938, did the rate thus increase eastbound out of Chicago, the proportional rate apply on a shipment that had come in over the river and have shown to have originated prior to that date?

A. Any grain that was in while the higher rates should have applied, if shipped after the effective date of the increase.

Q. Was that the practical application; was that what was done?

A. That is what should have been done, as I understand. I cannot say what was done; I do not handle the billing. I have troubles enough without it.

Q. Do you know what was done?

A. No, I don't know what was done.

Exam. Taylor: Any other examination of this witness? (No response.)

By Exam. Taylor:

Q. Mr. Brown, do these statements that you have made with respect to note 20 and note 40 practically throw out of the window that part of the rule that says that these rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission?

A. No, no, not by any means. All the transit rules is to provide for the policing, keeping of records, and sub-
[fol. 2239] mitting of the proper kind of inbound billing when you reship, but subject to what the rate is in the past.

Q. Yes, but we have got two rate rules in there that we have referred to previously on this record.

A. You mean 413-K transit rules.

Q. What have you to say as to Rule 61 of the transit tariff?

A. That rule cannot possibly change the value of the rate that is in the tariff. The first part of Rule 61 in the Chicago District transit tariff, B. T. Jones' Tariff 413-K, ICC 3204, reads as follows: "The through rate to be applied shall be the lawfully published rate through from the original point of shipment through to final destination in effect via the transit point at the time of the initial shipment from origin applicable to the commodity covered by the inbound billing which these rules permit to be matched against outbound shipment." There isn't a comma in that whole rule. It just means this: that whatever the rate is in the rate tariff, and whatever its application is that will be applied under this tariff. This transit could not possibly go into all of the ramifications and the exceptions that you will find in the rate tariff. Item 5, the part I read out of 535 Central Freight Association tariff it tells you that so far as the ex-river and ex-barge traffic is concerned, you do not have to comply with the same rules that you apply on the all-rail or all-water rates on file with the Interstate Commerce Commission.

[fol. 2240] Mr. Enoch: That is what you say.

The Witness: That is what the item says; and that has been so applied.

By Exam. Taylor:

Q. How about Rule 15 in this tariff?

A. Rule 15 is designated as the inbound charges, and reads as follows: "Shipments delivered to transit houses will be subject to full tariff rates of inbound carriers based on actual weights, subject to tariff minima." There is no complication in that rule, with the practice of recording either rail grain inbound or water grain inbound, because under Item 5 you are exempted from any such thing as that if there is no rate there.

Exam. Taylor: Is that all from this witness?

Mr. Enoch: May I ask one more question: Is this ex-barge grain Chicago in the elevator where it moves outbound in transit under the rules of the carriers?

The Witness: As long as it goes into that elevator it must be subject to the transit rules. If that transit operator wants to get the benefit of the transit rules. You will find somewhere in the transit rules that he has to make an application as a transit operator to operate certain houses. That may be 20 years old with some of these elevators. And he thereby agrees to abide by all of the rules, whether or not transit is necessary. Grain coming in by barge could go into an elevator and go out the next day, [fol. 2241] 30 days or 90 days; but we would still have to register—and when he loaded a steamer tell what billing he put against it. He is required to—otherwise he could keep inbound billing that would be valuable to him, which is not permitted.

Q. Do you find any tariff provision there which has to do with the requirement that in order for this ex-barge grain to engage an outbound proportional rate it must be in transit while in the elevator at Chicago.

A. Well, do you mean that a fellow could make use of a rate that he did not have any grain to put behind?

Q. No; let me ask you this: now, wheat comes in from Wichita and goes into an elevator at Kansas City, and six months later takes a proportional rate out to Chicago,—has had transit at Kansas City——

A. Yes.

Q. Now, when corn comes from Morris by barge into Chicago, and six months later goes out and takes the proportional rate to New York, has it had transit at Chicago?

A. Both has had transit at Chicago.

Q. The same type?

A. So far as the policing is concerned, yes; exactly the same kind of—except that the Wichita bill went into Kansas City, and when it came out of Kansas City it went over the Rock Island, it showed it came out of Wichita, and the date; so that man would know that the reshipping rate [fol. 2242] was that in effect at the time the car left Wichita. Now, I have already explained that the car comes in, the grain comes in by barge it can go into an elevator, and the rate the man pays is that in effect the date he offers his grain to the railroad.

Q. But you think they are two types of transit; and the transit, if any, at Chicago in connection with ex-barge shipments is only transit insofar as the policing provisions are concerned?

A. Oh, no; no. I said when it came in by barge and went out by lake there was really no transit involved, because no railroad is asked to do anything. But a shipper himself must be very careful to cancel off the amount of tonnage that he put on that lake vessel.

Q. Isn't that because he has a mixture of corn in his elevator; namely, corn that might have come in by truck, corn that might have come by rail, and corn that might have come in by lake, and corn that might have come in by Illinois river; that is the reason it has to be policed; if it were not for that, there wouldn't be any policing requirement there.

A. Oh, well, the policing requirement is to see that all the requirements are maintained;——

Q. Won't you say yes to that?

A. It is a transit bill; and this shipper elects to take out of that bill whatever he wants to take. If he takes it out of that bill and ships by lake, he is not asking the [fols. 2243-2244] railroads for anything;—if he takes out of that bill barge corn, offers it to the rails for eastern shipping, he has got to comply with the rules. And he surrenders the lake bill of lading; if he has 25,000 bushels and ships 15,000, he has 10,000 left.

Q. If he had an elevator into which he can only put in river grain and ships only lake, would there be any policing requirement?

A. No; but that fellow would not be in business very long. It is just kind of foolish to talk that way. I mean at a market like Chicago,——

Q. There is no harm in asking the question?

A. Oh, no; we have got lots of time.

Q. I want you to state the difference between transit at Kansas City and the transit at Chicago in those two illustrations?

A. None whatever, under the general rule.

Mr. Enoch: That is all.

Exam. Taylor: Any further questions from this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: We will adjourn at this time until 9:00 o'clock tomorrow morning.

(At 4:55 o'clock p. m., adjourned until 9:00 o'clock a. m., January 25, 1940.)

[fol. 2245]

Morrison Hotel,
Chicago, Illinois,
Thursday, January 25, 1940.

Before: R. G. Taylor, Examiner.

Hearing resumed at 9:00 o'clock a. m.

Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right, now, gentlemen, let's come to order.

A. M. Garrison, was sworn and testified as follows:

Direct examination.

By Mr. Dyche:

Q. Give your name and address to the reporter.

A. A. M. Garrison, special agent, freight traffic department, Pennsylvania Railroad, Chicago, Illinois.

Q. What has been your experience in rate matters, particularly in regard to grain traffic, Mr. Garrison?

A. I have been with the Pennsylvania Railroad 29 years. For the past 20 years I have been in the freight traffic department, handling rates on grain, also transit privileges on grain and other commodities.

Q. Are you familiar with the existing rates applicable on ex-barge grain east from Chicago?

[fol. 2246] A. I am.

Q. And are you familiar with the proposal——

A. I am.

Q. Before the Commission?

A. Yes, sir.

Q. Is the Pennsylvania Railroad in favor of the proposal?

A. Yes, sir.

Q. Yesterday did you hear Mr. Brown's explanation of the present existing tariffs and transit rules in connection with ex-lake and ex-barge traffic from Chicago to Official Territory?

A. I did.

Q. Will you state whether or not the Pennsylvania Railroad has based its interpretation on the same rules and tariffs, based its interpretation of the tariffs on the same rules referred to by Mr. Brown?

A. We did.

Q. Do you know whether or not the interpretation of the Pennsylvania Railroad was the same as that of Mr. Brown?

A. Yes, sir.

Q. I take it that these rules provided, according to the Pennsylvania's interpretation, which you stated was the same as Mr. Brown's interpretation, for the application of Northwest reshipping rates on ex-lake and ex-river grain?

A. Yes, sir.

Q. Now, when Jones' Tariff 535-A, ICC 2790 was amended to include——

[fol. 2247] A. That was——

Exam. Taylor: On what effective date?

By Mr. Dyche:

Q. I believe July 1, 1935?

A. 1935.

Q. Or June 28, 1935?

A. 1935.

Q. Is that right?

Mr. Belnap: In understood that the tariff to which you refer constituted an initial issue in so far as the publication of these rates is concerned, rather than being an amendment to that tariff.

By Mr. Dyche:

Q. That is the first time, as I understand it, when Jones' tariff brought in the rates on ex-river and ex-lake grain from Chicago and the individual rails' tariffs were cancelled, is that so?

A. That is correct.

Mr. Day: I object to that and move it be stricken. The tariff couldn't have brought the ex-barge grain into it because there was no such thing as a movement of ex-barge grain.

Exam. Taylor: In 1935?

Mr. Day: Started in 1935. These tariffs have continued as Mr. Tannehill's exhibits showed, much the same as 21 and 24.

By Mr. Dyche:

Q. Well, will you state what was done and what were the provisions in Jones' tariff 535-A, 2790, effective in June, 1935, and what was the intention of the carriers who, ac- [fol. 2248] cording to your understanding—at least from the Pennsylvania Railroad's standpoint, as to the meaning of that tariff?

A. Prior to the effective date of June 28, 1935, the reshipping and proportional rates from Chicago and western gateways were published in individual tariffs. Effective on June 28, 1935, the rates in individual tariffs were cancelled and became effective in Agent Jones' tariff referred to, which made a uniform application of rates for all carriers.

Q. From the Pennsylvania Railroad's standpoint, how was that tariff applied on grain originating at all sources?

A. The ex-northwest reshipping rates were applied on ex-lake, ex-river grain.

Q. Could you state in somewhat more detail the type of grain on which it applied with regard to the origins of the grain?

A. It applied on all the grain, covering the description of the grains in the tariff. It applied from Duluth, Superior, Minnesota. It applied from Canadian ports, Port Arthur, Port William. It applied from Georgian Bay ports; it applied from ports on the St. Lawrence River.

Mr. Day: I object to his statement.

Mr. Dyche: Let him finish.

Mr. Day: I object because the tariff is the best evidence, of what it contains, and I don't recall anything like that in the tariff.

Mr. Dyche: He is stating how it was applied as a practi- [fol. 2249] cal matter.

Mr. Day: I don't care how it was applied. I say that the best evidence of what the tariff provides is the tariff itself. There is no sense in this witness getting on the stand and reading into the record a lot of things that aren't there.

Mr. Dyche: He is stating how the tariff was applied, Mr. Day. If you don't——

Mr. Day: Well, I object to it.

Mr. Dyche: I submit that the testimony is entirely proper for its purpose.

Exam. Taylor: Mr. Brown yesterday put in considerable testimony as to how this operation was applied.

Mr. Day: Well, unfortunately I had to be absent while Mr. Brown was on the stand. I didn't hear the testimony.

Exam. Taylor: Under the circumstances, the objection is overruled. The witness may answer.

Mr. Day: Exception.

Exam. Taylor: Exception noted on the record. Proceed, Mr. Garrison.

The Witness: From the St. Lawrence River ports, also on grain imported via the St. Lawrence, Great Lakes routes through Chicago.

Mr. Enoch: May I have that last read? I didn't understand it.

(Record read.)

[fol. 2250] By Mr. Dyche:

Q. Now, at the time this tariff which you have discussed became effective and was established in June, 1935, was there any existing barge traffic of grain on the Illinois waterways?

A. There was barge traffic during 1934, and from the records of the Central Freight Association, it is shown there that consideration was given by the Central Freight Association General Committee to the rates on this barge traffic. The report has been read in the record of their handling and of their interpretation of the tariff.

Q. Was it the Pennsylvania Railroad's understanding and intention that this tariff should apply on ex-river ex-barge grain at Chicago, moving eastward to Official Territory?

Mr. Day: I object to the question on the ground that——

The Witness: It was.

Mr. Day: Just a moment, when I make an objection don't be so quick to answer. On the ground that the Pennsylvania's intention had nothing whatever to do with the terms of the tariff.

Exam. Taylor: Of its own tariff?

Mr. Day: With the tariff. The terms of the tariffs speak for themselves. Now, what the Pennsylvania say now that they may have intended is utterly irrelevant and unimportant to this hearing.

Mr. Dyche: I think the Commission is interested in what [fol. 2251] was the understanding of a railroad that was a party to this tariff as to how it was not apply on the traffic then existing, and which was potentially a very strong force.

By Exam. Taylor:

Q. Did you participate in any of the discussions that took place?

A. We did.

Q. In connection with this traffic?

A. We did. All the Chicago lines.

Mr. Day: The Examiner's question, if I may suggest, is whether you did.

The Witness: I did.

Exam. Taylor: Objection overruled. The witness may answer.

Mr. Dyche: I believe the answer was on the record, is that so?

Exam. Taylor: The answer was yes.

The Witness: It is on the record.

Mr. Belnap: Might I have the question read and the answer?

Exam. Taylor: He has answered it now.

Mr. Belnap: The question is, did he participate?

Exam. Taylor: Read the question.

(Question and answer read.)

By Mr. Dyche:

Q. Have you any further statement you would like to make at this time, Mr. Garrison?

A. I haven't any further statement than adopting the tes- [fol. 2252] timony and the understanding of Mr. Brown——

Exam. Taylor: Now, just a second. Off the record.

(Discussion outside the record.)

The Witness: I will concur in his testimony; I will put it that way.

Mr. Dyche: Thank you.

Exam. Taylor: Is that all?

Mr. Dyche: That is all.

Exam. Taylor: Any questions by respondents?

Mr. Day: You had better ask the people on the same side of the case first. That is what we have been doing right along.

Exam. Taylor: The Pennsylvania is a respondent, one of the respondents.

Mr. Day: I don't think it takes much to see what is behind the scenes here.

Mr. Dyche: Are you making necessary remarks or unnecessary remarks, Mr. Day?

Mr. Day: I say that the Pennsylvania here is testifying for the protestants, and the protestants should question them before cross examination.

Mr. Dyche: Now, Mr. Garrison——

Mr. Day: He is certainly a hostile witness.

Mr. Dyche: Mr. Garrison said we were in favor of the proposal.

Mr. Day: Sure, I know.

[fol. 2253] Exam. Taylor: Do you wish to reserve your cross examination?

Mr. Day: I would like to hear from the other protestants first.

Exam. Taylor: All right. Cross examine.

Mr. Belnap: Before I ask, might I get clear on the positions of the parties, Mr. Examiner?

Exam. Taylor: I would like to get clear myself.

Mr. Belnap: I understood that Mr. Cole had entered an appearance for all protestants, correct?

Mr. Cole: Correct.

Mr. Day: I thought he appeared for respondents.

Mr. Belnap: Well, respondents and protestants.

Mr. Day: Don't tell me he is going back on me too.

Mr. Belnap: I understood Mr. Cole entered an appearance for all of the respondents collectively, and I haven't heard Mr. Cole on this record make any statement which indicates a contrary position to that stated by Mr. Garrison.

Now, if I am misinformed as to that, I would like to know.

Mr. Day: I don't think there is any need for Mr. Belnap trying to stir up any more dissension in the railroad ranks than there is now.

Mr. Belnap: I understand Mr. Day is here for the New York Central, but I would like, if the Examiner will permit me to, to address Mr. Cole directly as to whether or not he, [fol. 2254] speaking for respondents collectively, takes any position in this case which is contrary to that stated by Mr. Garrison.

Mr. Cole: Mr. Examiner, this is a very neat point, and here is the way the thing rests upon the record. It is true that when Mr. Day and the whole crowd of us began on this case, all of us on the railroad side represented respondents, and we still do. There is no question about that.

Exam. Taylor: Including Mr. Dyche and Mr. Garrison?

Mr. Cole: Including Mr. Dyche and Mr. Garrison, of course, yes.

The Witness: Yes.

Mr. Cole: Now, the issue that I am trying and the issue that I am interested in and the only issue that I am interested in is the proposed change in this tariff wording which has to do with a prospective application of tariffs. I have noticed that during our hearing, we have gone into quite a number of factors that I could not at the time appreciate their application to the issue that we had here. I still don't. However, I appreciate that the Commission was anxious to get everything in the way of information in the record.

Exam. Taylor: That had a bearing on the situation.

Mr. Cole: That had a bearing on any of the matters in there, yes; so that I did not interpose a lot of technical objections to going into that, because I know that that is usual in these cases. However, there may be minor differences [fol. 2255] among the various respondents to nice technical questions that have to do—now, I want to make this clear—that have to do not with the issue that I am sent here to try but to other problems that may have been involved here, you see, and I would like to preserve—and I hope that I may continue to preserve—as much concert among the respondents as it is possible to do so, and I hope that we not be unnecessarily drawn out in dissension, if it is so clear that the dissension pertains to a point that I am not here trying, that I haven't been sent here to try.

Now, I hope that everybody, protestants and respondents that I am sent here to represent, can see why I ask that. I think the Examiner can see why I ask that. I think it is unnecessary.

Mr. Day: Now, if the Examiner please, may I make this statement? If Mr. Garrison is appearing here for the respondents, then he must be——

Mr. Dyche: He has told us he is appearing—well, go ahead and finish your statement.

Mr. Day: All right, you go ahead.

Mr. Dyche: He has said that he was appearing for the Pennsylvania Railroad, one of the respondents.

Mr. Day: Is that all you want to say?

Mr. Dyche: Yes.

Mr. Day: Please let me address the Examiner. If Mr. Garrison is appearing here to testify for the respondents, [fol. 2256] then perforce he must be testifying in rebuttal of the testimony that has just been concluded by the respondents. Is that the situation or is he appearing here, as I surmise, to bolster up the case of the protestants? If he is here for the protestants, then certainly the other protestants' counsel should examine them before cross examination by adversary parties.

Mr. Dyche: He is not here for protestants, in answer to your question.

Exam. Taylor: Mr. Dyche, just a minute. Let Mr. Day conclude. Is that all?

Mr. Dyche: I thought he had concluded.

Mr. Day: That is the situation. Whether the protestants had rested their case, as I would assume they had, or else it wouldn't be the time for respondents to go on; if they hadn't rested their case, then this is still certainly part of the protestants' case. Now, in the interest of orderly procedure, it seems to me that the testimony of Mr. Garrison is hostile to the respondents' case. If it is, then certainly the other parties on the other side ought to examine him first.

Mr. Belnap: Well, before examining, might I say one thing, please. I think in so far as protestants insist we have got a case here, that this testimony is in support of protestants' position; and I am perfectly happy to ask some addional questions relating to the matter as to what the present application of rates is.

[fol. 2257] Mr. Dyche: As far as we are concerned——

Mr. Belnap: May I say, the thing I would like to inquire of Mr. Cole, which he hasn't yet indicated his position, as to whether or not he agrees with me that we do have a lawsuit within the Commission's jurisdiction, in that the respondents propose to apply a different rate in the future on exbarge grain than is presently applicable thereto. Now, unless that is the respondents' position, they are contending that we are trying something over which the Commission has no jurisdiction.

Mr. Cole: Oh, no.

Mr. Belnap: Because the Commission obviously has no jurisdiction, if there is no change in rates under an I & S order. I think I am right in that.

Mr. Day: The Commission has repeatedly passed on matters of tariff clarification and simplification.

Mr. Belnap: Certainly, but if a lawsuit which Mr. Cole says he wants to try and I want to try relates to the future, then it can only be because there is a change in the application of rates.

Exam. Taylor: Just a minute, now.

Mr. Belnap: That is the one I would like to inquire——

Exam. Taylor: There is no use going off at a tangent in this thing. This case is a proposition by certain respondents to modify a tariff or the manner of applying proportional and reshipping rates. The respondents are here in [fol. 2258] justification of that change.

Mr. Belnap: I so assume, Mr. Examiner.

Exam. Taylor: That is all we have.

Mr. Cole: Yes, sir.

Exam. Taylor: Now, all these other matters are collateral.

Mr. Belnap: And I understand Mr. Cole agrees with that statement the Examiner just made.

Mr. Cole: Absolutely, 100 per cent.

Mr. Belnap: That makes us have a lawsuit which is subject to the Commission's jurisdiction, and I am willing to proceed.

Mr. Day: May I make a statement of my position?

Exam. Taylor: Off the record.

Mr. Day: I would like to have it on the record, unless Mr. Belnap's statement and Mr. Cole's are eliminated. My position is that the——

Exam. Taylor: Don't take this, Miss Reporter.

(Discussion outside the record.)

Mr. Cole: May we have a five minute recess?
Exam. Taylor: Yes, a five minute recess.

(Recess taken.)

Exam. Taylor: Proceed, Mr. Belnap.

Cross-examination.

By Mr. Belnap:

Q. Mr. Garrison, exhibit 19 introduced by the Chicago Board of Trade, shows that the receipts of grain in this [fol. 2259] market by Illinois waterways, beginning with 1933, 137,000 bushels having arrived that year, 1,154,000 bushels in 1934 and 1,554,000 in 1935. Does that refresh your recollection to the extent you can say as to whether you knew there was such a movement in the market?

A. I would accept that statement of a movement of grain from the river. I haven't any billing before me, moving out in the Pennsylvania Railroad at any time. I can only recall that during that period or during that time is when the barge grain first began to appear at Chicago for reshipment.

Q. And prior to the publication of Jones' Tariff ICC 2790 on June 28, 1935, I understand that in so far as CFA Territory is concerned, the rate application for proportional reshipping rates was contained in the individual line's issue?

A. That is correct.

Q. You heard Mr. Brown testify that as of that prior period, there was considerable question as between individual carriers as to which proportional rate was properly applicable to grain?

A. That is correct.

Exam. Taylor: And Mr. Garrison also stated that there wasn't entire uniformity.

Mr. Belnap: That is right.

Exam. Taylor: Of the tariff rules covering the subject.

By Mr. Belnap:

Q. In individual issues, they differed, did they not, in their wording?

[fol. 2260] A. That is correct.

Q. Your tariff, I don't believe, is shown in Mr. Tannehill's exhibit 1. That rests on a New York Central tariff.

A. I believe so.

Q. And was this varying interpretation between individual lines of their tariff a matter which received considerable attention in the grain trade and between the grain trade and the railroads in that period?

A. It did, and that will be shown by the Central Freight Association matter read into the record of January 3-5, 1934, which had been given consideration before that time.

Q. It was given consideration at that time because there was a movement, was there not?

A. There was a movement, and as to the application of the Illinois reshipping or the northwest reshipping rates.

Q. That was the controversy, was it?

A. That was the principal controversy at that time. Some of the roads' tariffs were interpreted to reshipping rates; others the northwest rate.

Q. And the reshipping rates are the ones which, by these individual lines' tariffs, were made applicable on grain other than from the northwest and other than from the T M Territory?

A. That is my understanding. Not with the Pennsylvania Railroad. We applied our northwest reshipping rate under our individual issue.

[fol. 2261] Q. Do you happen to have the tariff reference of that individual issue?

A. I have not.

Q. Was there at that period, and this is prior to the Jones' tariff, a general agreement, however, that either the reshipping or the northwest proportional would be applicable on the ex-barge grain?

Mr. Enoch: Just a minute, I object to that.

Exam. Taylor: Read that.

(Question read.)

Exam. Taylor: Mr. Belnap; I think that conference has indicated that there wasn't. They wanted to get together and that was the reason for the conference.

Mr. Belnap: I withdraw that question. I don't understand, Mr. Examiner, that at that time there was—well, I will take it back. I will take it all out, because that is a little too controversial.

By Mr. Belnap:

Q. Were you present at those meetings in January, 1935, as to which Mr. O'Connor read minutes into the record?

A. The meeting of January 23, 1935, shows the representation of the Pennsylvania Railroad as being F. W. Nash and A. M. Garrison.

Q. You are the Mr. Garrison that refers to?

A. I am the Garrison that refers to.

[fol. 2262] Q. You were at the earlier meeting about a week preceding that?

A. I would say at most of them, if not all of them.

Q. Now, following those meetings, when the carriers made certain records as to their views in general and as to their individual views, was there any effort on the part of the carriers generally, cooperating with Mr. Brown of the Board of Trade, to work out something definite?

A. At the time——

Q. And what took place. Just tell it in your own way.

A. At the time that the individual tariffs were cancelled, the committee handling grain rates handled these matters with the Board of Trade and with the grain shippers in Chicago, and it was an understanding, I would say with all of them, that these rates would be applied and it would be the northwest rate.

Q. Now, when Note 40 in Jones' tariff was first published on June 28, 1935, Jones' ICC No. 2790——

Mr. Enoch: Will you refer to that by exhibit number?

By Mr. Belnap:

Q. Yes, that is on page 4 of exhibit 1. The tariff reference is there. The note 40, I think, is contained over on page 6 of that exhibit. Did the carriers endeavor to select language in that note which would carry out the intent you have just expressed?

Mr. Enoch: Just a moment, I object to that. Now, as I understand——

Mr. Belnap: They may not have accomplished it, Mr. [fol. 2263] Examiner. I want to know whether that is what they tried to do.

Mr. Enoch: It doesn't make any difference whether they accomplished it or not. The Commission will determine that. And as I see this situation, the only subject matter

about which proper inquiry may be made of Mr. Garrison is what the carriers did, in an effort to show what a practical construction of the tariff they compiled was by them.

Mr. Belnap: I think, Mr. Examiner, I am entitled to have that question answered just as asked. This man was on the committee.

Exam. Taylor: Will you agree to this, Mr. Belnap, that regardless of what they said, in the final analysis the interpretation of those tariffs is the only question before the Commission?

Mr. Belnap: I say that is one of the most minor questions before the Commission. I think the future matter is the thing of importance here, but I think we can't have a lawsuit about the future unless we settle what is the present, and that is the only reason I go into it at all.

Exam. Taylor: In order to decide what is the present, the Commission has to interpret the tariff, does it not?

Mr. Belnap: Precisely. I appreciate that, sir.

Exam. Taylor: And I can't see that it would be very helpful, if Mr. Garrison was to go right along with you and say, why, yes, we tried to make this thus and so, if they [fol. 2264] didn't accomplish that in the tariff that was published.

Mr. Belnap: That is true, but that is a preliminary question too——

Exam. Taylor: I don't see where it would help any at all.

Mr. Belnap: That is a preliminary question, Mr. Examiner, to finding out what they did as a physical choice of language, to accomplish that purpose.

Exam. Taylor: You may answer it for such value as it may have.

The Witness: Will you read the question, please?

(Question read.)

The Witness: They tried to make rules and use proper language in the rules to accomplish that. This was explained fully in Mr. Brown's statement as to the various items and the rules in conjunction with Note 40, which was particularly Item No. 50, page 92, upon which the carriers based their interpretation.

Mr. Enoch: Just a minute.

By Mr. Enoch:

Q. Is that right, in Jones' 535-A?

A. Yes.

Q. Page 92?

A. Yes, that is in the present issue. It is in 535-A, ICC 3300, Item No. 5, page 92.

By Mr. Belnap:

Q. Since the date of the first publication of Jones'—of Note 40 in the Jones' tariff which you mentioned and [fol. 2265] throughout the succeeding issues, has that northwest proportional been applied by your line and by the carriers, if you know, to grain originating in the territory described as northwest, for the purpose of rail rate application as well as to grain—and which grain came to Chicago via lake—as well as to grain coming to Chicago via lake from Georgian Bay ports, from Lake Erie ports and import grain through the St. Lawrence waterways, grain via barge from Kansas City to Chicago and grain from Illinois via barge to Chicago?

Exam. Taylor: Hasn't he already answered that? Wasn't that his testimony?

Mr. Belnap: He hasn't covered all of them, Mr. Examiner. He hasn't mentioned Kansas City and he hasn't mentioned Lake Erie ports, if my notes were correct, and I was trying to ask one all-inclusive question to get them all in.

Mr. Enoch: Neither has he gone into the question of what kind of a barge brought it into Kansas City and——

Mr. Belnap: I will ask him that.

Mr. Enoch: And what kind of a boat brought it into Georgian Bay ports and other ports, and what kind of a carrier was it brought it in from the Illinois River.

The Witness: I can only speak for the Pennsylvania Railroad, and the northwest rates were applied on that traffic. If there were any moved or any billing applied against outbound rail shipments——

[fol. 2266] By Mr. Belnap:

Q. And do you know, Mr. Garrison, as to the Pennsylvania Railroad, you have handled ex-water grain out of Chicago which came in from all those various origins?

A. I couldn't say definitely. We would handle grain if it was offered, yes. I haven't seen the billing. I know there has been ex-barge billing applied. I know there has been ex-lake billing applied; but from Kansas City, I couldn't say definitely about that. And I know that there has been ex-Argentine and ex-African corn billing applied.

Q. You do know that?

A. I do know that.

Q. In CFA Territory. Now, as to the type of vessels which brought it into Chicago on the lakes, what do you know about that?

A. I know nothing at all.

Q. On the Illinois River, from Illinois, do you know anything about that?

A. I don't believe I have even seen a barge that I could identify as to hauling or handling grain.

Q. What about grain from Kansas City via river?

A. I have no knowledge of that equipment.

Q. In order to determine on behalf of the Pennsylvania what is the correct application of rates, have you felt it was necessary to look into hat situation, either as to the inbound movement on the lake or the rivers?

A. Not necessarily, because the application of the tariff [fol. 2267] doesn't define or describe any type of boat or a barge.

Q. Do I understand that as a respondent in this proceeding, you appear here in support of a change in the rates applicable on ex-barge grain brought to Chicago by carriers who have no rates on file with the Commission?

A. Be specific.

Exam. Taylor: It is ex-barge grain?

Mr. Belnap: Ex-barge grain.

The Witness: I would like to read that; I didn't quite get it.

Exam. Taylor: Read the question.

(Question read.)

The Witness: We do.

Mr. Belnap: That is all I have.

Exam. Taylor: Mr. Macaulay?

Mr. Macaulay: No.

Mr. Belnap: There is one other matter that I wanted to ask Mr. Garrison about which isn't directly connected with

his direct, and that is the situation at Toledo; if I may do so, Mr. Dyche?

Mr. Dyche: I have no objection.

Mr. Cole: I do.

Mr. Belnap: I could simply call him for my own witness. I am perfectly willing to have him in that status, Mr. Cole.

Mr. Cole: Well, if you insist to that extent.

[fol. 2268] Mr. Belnap: I will be bound by his testimony. It is not cross-examination.

Mr. Enoch: I understand you are willing to be bound by all the testimony he has given up to date.

Mr. Belnap: I am always bound by the truth, Mr. Examiner.

By Mr. Belnap:

Q. I show you Agent Jones' Freight Tariff 245-G, ICC 3356.

Exam. Taylor: And the effective date?

By Mr. Belnap:

Q. Effective November 15, 1939. I call your attention to page 181 of the tariff. Will you state the character of rates carried on that page of the tariff and how they are headed?

Mr. Cole: Just a minute, I would like to interpose an objection to going into the Toledo situation unless Mr. Belnap will explain to us in what way that would have an effect upon the interpretation of the matters we have before us, going through Chicago. I think we are getting away out of this realm. We are just getting worse and worse on this, getting away from the issue here.

Mr. Belnap: Well, we have Toledo rates in here for matters of comparison, Mr. Examiner, and I want to show the manner in which those rates apply, according to the tariff, and I was going to do it through some witness. Mr. Garrison, as I understand, is familiar with that grain situation in Toledo and Chicago and I want to do it through him.

[fol. 2269] Exam. Taylor: Inasmuch as it is in the record, I think it should be explained.

The Witness: The page cited publishes ex-lake—(export)—rates on corn from Cleveland, Detroit, Irondale, Rossford, Sandusky and Toledo.

By Mr. Belnap:

Q. To what points?

A. To Baltimore, Maryland, Boston, Massachusetts, New London, Connecticut, Newport News, Virginia, New York, New York, Norfolk, Virginia, and Philadelphia, Pennsylvania.

Q. Now, do those rates published in that page include elevation charges?

A. They do not.

Q. That is specifically provided for in the page, is it not?

A. Yes.

Q. The rates are net rates. Now, directing your attention to the rates from Toledo to Baltimore which are shown in a rate exhibit in evidence in this record. What is the rate published from Toledo to Baltimore, first, in connection with the Pennsylvania, and then in connection with the New York Central?

A. 13 cents in connection with both lines and all Toledo lines.

Q. And to what note is the application of those rates made subject?

A. To notes—subject to application of——

Q. No, this.

A. Notes 194—pages 194 and 195.

[fol. 2270] Q. And what are the numbers of the notes on those pages which govern the application of the rates via both the Pennsylvania and the New York Central?

A. One.

Q. Will you please turn to Note 1, read the heading over that section of the tariff.

A. "Explanation of notes, in connection with ex-lake and reshipping (export) rates."

Q. "Export" appears in parentheses?

A. It does.

Q. Now, will you read Note 1.

A. Note 1. "Where reference is made to this note, the ex-lake grain or grain product rates will apply only on grain or grain products which arrive at Cleveland, Ohio, Detroit, Michigan——"

Mr. Cole: Just a minute, just a minute now. Now, if the Examiner will bear with me——

Mr. Belnap: Can't we read it first?

Mr. Cole: No, you can't read it first; you have got it in the record then. This note applies not only in conjunction with the application of rates at Toledo which we started out to define, but this note is a common note that applies to various rate situations at a number of other points. They throw it all into this one note. Now, I don't think it is fair to read a common note covering the Toledo application unless we get the foundation and the background covering [fol. 2271] the inbound application at every one of those other points, because they don't apply the same outbound. Do you understand what I mean?

Exam. Taylor: Off the record.

(Discussion outside the record.)

The Witness: "Where reference is made to this note——"

By Mr. Belnap:

Q. This is quoted, now. Let's get it clear. You are going to quote the note?

A. And leave out all those others.

Q. Excepting that you are going to leave out all the points named in the note as origin points except Toledo?

A. That is right. "Where reference is made to this note, the ex-lake grain or grain product rates will apply only on grain or grain products which arrive at Toledo, Ohio, * * * via lake; also on grain products milled from grain which arrive at the ports via lake. The ex-lake rates covered hereby are applicable as of the date shipments leave Toledo, Ohio," and underline that as a change, because it refers to other points.

Exam. Taylor: Just one question.

Mr. Belnap: I want the rest of the note read. He hasn't completed it.

The Witness: "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission."

By Exam. Taylor:

Q. Now, there is nothing in that note that indicates that these are proportional rates?

[fol. 2272] A. Only by ex-lake.

By Mr. Belnap:

Q. And reshipping?

A. And reshipping. And this is the application for these rates on ex-lake grain.

Q. Now, Mr. Garrison, will you tell us what is the tariff carrying the transit rules and regulations on file with the Commission to which that note is subject?

A. The present effective tariff is Agent Jones' Tariff 340-G, ICC 3240, effective March 10, 1939.

Exam. Taylor: Now, are you going to have him read specific rules in there?

Mr. Belnap: The two that you called my attention to in the Chicago tariff.

Exam. Taylor: Are they the same?

Mr. Belnap: He can say that. They are identical.

Exam. Taylor: Put it that way, then.

By Mr. Belnap:

Q. There has been reference on this record, Mr. Garrison, to a number of the rules in the Chicago transit tariff, some of them relating to simply policing requirements, but specific reference has been made to rule 15 headed "Inbound charges", and rule 61, which is in two parts. The top part of it is headed "Rates." Are there identical rules contained in the transit tariff governing the application of the ex-lake and reshipping rates from Toledo?

By Exam. Taylor:

Q. Or would you say that they are substantially the [fol. 2273] same?

A. Substantially the same. To say identical, I would have to read both of them. But the rules covering transit privileges at the lake ports are substantially the same in all respects.

By Mr. Belnap:

Q. Now, would you give the number of the note in the Toledo transit tariff which corresponds to note 15 in the Chicago tariff?

A. I would have to compare this. The inbound charges under note 20 of Agent Jones' Tariff ICC 3240.

Q. Then will you give the number of the note which relates to note 61 of the Chicago tariff and deals with the through rate to be provided on transit grain and provide it shall be the lawfully published rate from point of origin and so forth?

A. Paragraph A, rule 60, page 5 of Jones' Tariff ICC 3240.

Mr. Belnap: That is all.
Exam. Taylor: Mr. Macaulay?
Mr. Macaulay: I have nothing.
Exam. Taylor: Mr. Brown?
Mr. Brown: No.
Exam. Taylor: Mr. Day?
Mr. Day: Yes, sir.

By Mr. Day:

Q. Mr. Garrison, you made the statement that prior to the time these provisions for application of reshipping rates were put in the Jones' tariff, each line had its own individual issue?

[fol. 2274] A. Correct.

Q. Then you said that those several tariffs contained conflicting provisions with respect to the application of reshipping or proportional rates?

Exam. Taylor: They weren't uniform.
The Witness: Mr. Day——
Exam. Taylor: I don't believe he used the word "conflicting," Mr. Day.
Mr. Day: He said they varied.
Exam. Taylor: I think he said they were not uniform, that is the term he used.

By Mr. Day:

Q. Now, Mr. Tannehill presented his exhibits Nos. 1 and 2, quoting from tariffs of the Lake Shore and Michigan, Southern and New York Central Railroad, and he said that those tariffs were typical of the tariffs of the other lines. Now, I wonder if, for the Pennsylvania, you will state for the record what the difference was between the Pennsylvania tariff and the New York Central tariff in effect prior to the compiling of all of the railroads' issues into this agency tariff?

A. I haven't even the tariffs before me. I at this time could not make any statement as to the difference. The only thing that I am following here was some CFA records where it was stated at a conference of the lines; that there was some question as to the New York Central tariff being applicable at that time.

[fol. 2275] Q. That is why it becomes important to determine what the Pennsylvania tariff provided in the way of a difference.

A. That was determined by the General Committee or members of the General Committee at their many meetings, and their decision is the one that we are guided by.

Q. Now, the Pennsylvania tariff, then, was different. Was the tariff of the B. & O. also different?

A. I cannot answer it, I do not know.

Q. Was the tariff of the Erie different?

A. I could not answer as to any of the tariffs at this time.

Q. Then you didn't mean what you said when you testified on direct that the tariffs weren't uniform? As a matter of fact, you don't know?

A. I am taking that as a matter of record of the association lines.

Mr. Dyche: He testified he was present at these meetings. That was brought out.

Mr. Day: If you want to make an objection go ahead, but don't interrupt me unless you want to make an objection to the Examiner.

Mr. Dyche: I think it is an unwarranted question, in view of the prior statement.

Mr. Day: This is cross examination. My recollection of what the witness stated was that the tariffs of the several lines were not uniform. Now I am trying to get some in-

[fol. 2276] formation from the witness in amplification of that statement.

By Mr. Day:

Q. Now, as I understand it, you say that you have no information on that subject except in the minutes of this meeting of January 18, 1935, which were read into the record here, that it was stated that the New York Central tariff was different. Is that what you now say?

A. That is exactly what I am relying on right now.

Q. That isn't what the minutes said, was it? The minutes said the New York Central tariff has to be modified to conform to the provisions generally provided for in the other CFA roads' tariffs?

A. That is exactly that, and I would take from that minutes there that there was some question as to the New York Central tariff, and there was one of the reasons that these reshipping and proportional rates were put in an agency issue, was to remove these so-called conflictions, if any, and make a uniform application for all carriers.

Q. But as to what the tariffs actually contained, you have no knowledge?

A. Not at this time, except I know that at the time and since that time, that our tariff has been interpreted to apply the northwest rate on ex-lake and ex-barge grain.

Q. Now, since your testimony does contradict the testimony of Mr. Tannehill in respect to these tariffs, I wonder if you would mind furnishing for the record the similar [fol. 2277] provisions of the Pennsylvania tariff in effect prior to the taking effect of this agency tariff?

A. I am not accepting the statement that my statement conflicts with Mr. Tannehill's. I am only saying that the carriers interpret the tariffs to apply this, which Mr. Tannehill made a direct statement on the stand.

Q. Mr. Tannehill did make the statement that the provisions of the New York Central tariffs and the provisions of the Lake Shore tariffs which preceded them were typical of the tariffs of all of the CFA lines. You dispute that?

A. I am not disputing anything.

Q. You are not disputing it?

A. No, I am not disputing it.

Q. Is the New York Central typical or isn't it?

A. I am not saying; I don't know today. That has been five years ago. I am taking it from the record of the association.

Q. Now, Mr. Garrison, you have been in conferences and conversations with protestants throughout this hearing, have you not?

A. I have talked with them, yes. I have got friends.

Q. And with respect to this business that is moving off the barges by rail to the east, your company is getting the great share of it, isn't it?

A. I can't tell you what our company is getting.

Mr. Dyche: I will object to any further questioning on that ground.

[fol. 2278] The Witness: I will answer it.

Mr. Belnap: I submit this shows the interest of the witness.

Mr. Dyche: How much of the traffic we are getting is not involved in this proceeding in any respect whatsoever.

Mr. Day: It shows the interest of the witness in this case.

Mr. Dyche: I have told you the witness is testifying for the Pennsylvania Railroad as a respondent.

Mr. Belnap: I should assume, Mr. Examiner, the witness would tell the truth, whether he got any traffic or not.

Mr. Day: I assume he would. That is why I am asking him.

The Witness: I hope I do and that is the reason I am on the stand.

By Mr. Day:

Q. And your truthful answer to my question is that you don't know what the Pennsylvania is getting?

A. I have no knowledge. My department is entirely separate from any solicitation force. As far as concern many of these fellows, I have never seen them.

Q. That is your truthful answer?

A. That is a truthful answer. I have talked with them and everything else and I hope I continue to talk with them.

Exam. Taylor: Is that all the cross examination of this witness?

Mr. Enoch: I would like to ask some.

[fol. 2279] Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Garrison, this item No. 5 in freight tariff 535-A to which you previously referred is the item which you say changed the tariff situation on or about January 1, 1935?

A. Used in conjunction with all the other rules.

Q. What other rules?

A. Well, the rules that have been referred to. I believe it was rule 20 of tariff—well, 535-A. I can't remember the ICC number.

Q. I think item 5 was the piece de resistance that really put it over?

A. That was the one that Mr. Brown explained yesterday and was the understanding between the railroads and the shippers as to the interpretation of rules as to the application of northwest rates on this traffic.

Q. That is the principal item, in your opinion?

A. That is with item 20, yes.

Q. That is——

A. With item 20 and all the other items and rules in the tariff.

Q. Were items 20 and 40 changed at the time item 5 became effective?

A. I couldn't answer as to that, Mr. Enoch, at this time. There was changes made and changes afterwards and there have been changes made all the way through.

[fol. 2280] Exam. Taylor: Just to get the record straight, Mr. Enoch, as I understand it, this item 5 that you are talking about was in effect long prior to this date that he is talking about, 1935?

By Mr. Enoch:

Q. How long has item 5 been effective?

A. I couldn't answer that.

Exam. Taylor: I think there was some testimony yesterday that that first became effective in 1925.

The Witness: 1922, I believe. Now, I wouldn't say that positive, but it was in effect at the time that this came up.

Mr. Belnap: This is Jones' tariff in CFA? I thought that the 1935 date was the first time that that tariff——

The Witness: It was in that tariff, but similar items were in other tariffs.

Exam. Taylor: That is a reissue of items that had been there for years and years.

Mr. Belnap: In individual lines' tariffs.

The Witness: Yes, 535-A was a consolidation of all the rules, you might say, in the other tariffs, to make them uniform. It was in some tariff because if it hadn't been, it wouldn't have been in 535-A.

By Mr. Enoch:

Q. I gather from your testimony and perhaps from testimony which preceded yours, that prior to 1935 the carriers had some disagreement among themselves as to the application of these rates because of the different provisions in the

[fol. 2281] individual lines, and after long study and thought, you finally agreed upon item No. 5 as a cure-all.

Mr. Brown: Now, just a moment. You said that the railroads disagreed, Mr. Enoch. That isn't a fact.

Mr. Enoch: I didn't intend to state it as a fact if it isn't so.

Exam. Taylor: I would state that they agreed to bring their tariffs into uniformity.

The Witness: Mr. Enoch, for the record, I will just explain some of the things that came up. Some of the roads were applying the ex-Illinois reshipping rates on ex-barge grain under their individual tariffs, and it wasn't the Pennsylvania Railroad. The question arose as to what was a proper rate to apply on this, and all stating and agreeing that ex-proportional or ex-northwest rates should be applied. And it was the agreement, understood by the Chicago trade, that the ex-northwest rate should be applied on this traffic.

By Exam. Taylor:

Q. On the ex-barge traffic?

A. On the ex-barge traffic, and since that time, to my knowledge, I don't know of any other rate being applied on such traffic.

Q. And is this true, that it just so happens that this rule 5 had been in effect all the time?

A. And that was what brought it up, Mr. Examiner, at the time, was the application of our present rates on ex-barge grain.

Q. I will ask you one more question. This rule 5 that we [fol. 2282] have been talking about here was in effect long prior to the time that you had any ex-barge traffic?

A. It wasn't put in there to make rates applicable on ex-barge grain.

By Mr. Cole:

Q. But all roads differ?

A. Yes.

Mr. Cole: In all the individual tariffs.

By Mr. Enoch:

Q. You say it was or was not?

A. It was not put in there, for the particular reason that it appears on ex-barge grain. It was there when ex-barge grain started to move.

By Mr. Enoch:

Q. Why is it important now as to what was settled as being in this tariff as of January 1, 1935, if you didn't——

Mr. Belnap: It couldn't be in that tariff January 1st.

The Witness: June 28th.

By Mr. Enoch:

Q. If it wasn't for the purpose of bringing together a uniform practice on behalf of the eastern lines?

A. Oh, yes. It was brought from some tariff. I wouldn't say that rule 5 was in all tariffs. I wouldn't know, wouldn't have any way of knowing, but it was in some tariffs and the some tariffs was the reason it was brought forward in Jones' 535-A, because that tariff put together all the rules that were in the individual tariffs, the other individual tariffs.

By Exam. Taylor:

[fol. 2283] Q. But it wasn't a new rule, it wasn't written for the purpose of applying only to this ex-barge traffic?

A. No.

Q. But developed after the rule had been established?

A. It was interpreted as applying on ex-barge traffic.

By Mr. Enoch:

Q. Now, do you base the interpretation you have just referred to on the last sentence?

A. Mr. Brown gave it pretty completely. Oh, here?

Q. Yes.

A. Yes, that would be the principal thing.

Q. Now, in your efforts to have some uniformity in the application of these rates eastbound, do you give any consideration to the character of the transportation agency that would bring this grain into Chicago?

A. I wouldn't say that. Of course, we knew it had to be in some kind of a boat or a barge to get it up the

river. The only thing that we have to go by and rely on is the recording of the billing, the manner in which it is recorded. It comes in in a boat or a barge, so many bushels or so many pounds, not particularly bushels, and that is applied against the outbound, as the so-called records were read in yesterday.

There was a lot of consideration given to this. It wasn't any overnight work. It was given consideration by years and all leading up to the future. It was some way to get the rates made through some of this affected territory via [fol. 2284] all rail in competition with the barge. The Pennsylvania Railroad has been very desirous, Mr. Enoch, for your benefit, of doing that.

Q. In 1935, was the Federal Barge Line bringing any of this grain into Chicago up the Illinois River?

A. I couldn't answer that. Possibly the exhibits would show that. I couldn't answer that.

Mr. Belnap: Mr. Oliphant's exhibit does show that, I think.

By Mr. Enoch:

Q. Did you know prior to this hearing that some of this grain upon which you are applying proportional rates was brought into Chicago by private carriers?

A. I didn't even know prior to this meeting who owned the barges or who did the towing. I have no knowledge of the operation of the river or the lake or anything else.

Q. When you were intending to have this uniform application of rates east of Chicago, did you know at that time whether or not any of the grain upon which they were to be applied was being brought into Chicago by private carriers?

A. No.

Mr. Dyche: Will you read the question, Miss Reporter?

The Witness: I answered it no.

Mr. Dyche: You answered this last question.

Exam. Taylor: May I see that rule 5? Off the record.

(Discussion outside the record.)

Exam. Taylor: Had you finished, Mr. Enoch? Mr. Gar-
[fol. 2285] rison, you adopted Mr. Brown's testimony?

Mr. Dyche: He said he concurred in it.

The Witness: Concurred in Mr. Brown's testimony, please.

By Mr. Enoch:

Q. Concurred in that. And that concurrence includes Mr. Brown's statement about transit?

A. Yes.

Q. You considered that this corn, for example, comes up from Morris, put into an elevator at South Chicago and then moves eastbound a week or a month or six months after unloading into the elevator, is in transit at Chicago just as grain at Kansas City would be in transit that is brought in from Kansas and put in the elevator and six months later moves out to some rail destination?

A. Yes, sir, under the provision of the transit rules.

Mr. Enoch: That is all.

By Exam. Taylor:

Q. Mr. Garrison, you have been talking about item No. 5. The application of the rates contained on page 92 of Agent Jones' ICC 3300. The last paragraph of that rule reads, "The foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex-river, ex-ocean or ex-lake traffic." Isn't it true that the carriers, including the Pennsylvania, attempted several years ago to take that clause out of rule 5?

A. As I recall it, yes, and it was either suspended or withdrawn.

Exam. Taylor: I think the way it happened, the carriers [fol. 2286] filed a tariff attempting to cancel out the last paragraph of that item 5 and this was protested. Before action was taken by the Commission, the carriers withdrew the tariff. Is that your recollection, Mr. Brown?

Mr. Brown: I don't remember that, but I know that that last paragraph in that is to exempt or except river grain or lake grain from certain provisions that apply to rail grain; namely the principal one is the application of the local rate from the reshipping point.

By Exam. Taylor:

Q. In your opinion, does this last paragraph nullify the first paragraph?

A. Oh, yes, it does that as far as the ex-barge is concerned.

Mr. Enoch: That is what I can't understand. I can't see the pertinency here, because this simply undoes what has been by the first paragraph of that item No. 5 and relies wholly on the provisions in other tariffs.

Exam. Taylor: I think there is sufficient in the record and we can argue on brief as to that.

Have you any further questions of Mr. Garrison? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Dyche: I would just like to state, to clear up the record, that Mr. Garrison has testified on behalf of the Pennsylvania Railroad as one of the respondents, and it was [fol. 2287] thought that after Mr. Brown's testimony, giving his views of the tariff, it would be helpful for the Commission to have the views of at least one of the respondents.

The Pennsylvania Railroad as respondent is not supporting the proposed adjustment on the basis that there is any question as to the applicability of the past existing rates. They have always considered them applicable and do now, and they understand that was the position of at least some of the other respondents.

Exam. Taylor: Thank you.

Mr. Macaulay: Mr. Examiner, I called Mr. Donahoe as a witness and he made certain statements from memory as to the amount of corn that he sold during the year 1939 and the price which he received. Mr. Donahoe tells me that upon going home, he checked his records and he finds that he made some misstatements which he would like at this time or some time during the course of the balance of the hearing to correct, if he may.

Exam. Taylor: You may put Mr. Donahoe on at this time to clear that up. Mr. Donahoe.

Mr. Macaulay: Mr. Donahoe has been previously sworn.

JOHN T. DONAHOE recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Macaulay:

Q. Mr. Donahoe, are you the same Mr. Donahoe that appeared a few days ago as a witness for Mr. Finnegan? [fol. 2288] A. Yes, sir, I am.

By Exam. Taylor:

Q. Appeared Monday, January 22, 1940?
A. Yes, sir.

By Mr. Macaulay:

Q. You made certain statements relative to the price you received for grain sold during the year. Do you wish to make any statments correcting the statements that you previously made?

A. Well, I went home and went over the record of my sales in the last year, and I find that the difference or the prices I gave were not—they were too low in comparison to what I really received.

Q. Do you have your records here so that you might testify from them?

A. Yes, sir, I have.

Q. Now, will you go through the various sales during the year 1939 and the price you received and the price, if you know, that grain was bringing in the Chicago market on the day that you made the sale?

A. Well, now, there is one thing I want to—on the price on the Chicago market, I would take the call bids on the date of sale of grain to arrive. That would be the price as I have been told and shown by Mr. Finnegan. I have argued with him on that question when I was selling grain, and that, as I understand it, is what he sells this grain on.

Q. Where did you get the——

[fol. 2289] Exam. Taylor: Is that after the close of the market?

By Mr. Brown:

Q. He gets the to-arrive price today which he is using on comparison with sales that he made the next day?

A. Yes, sir.

Q. Or that day?
A. That day, yes, sir.

By Mr. Macaulay:

Q. From where do you get your information regarding the call price or the price of grain on the days in question?
A. Well, we would get it from this Daily Trade Bulletin. It is a financial and commercial paper published with all the commodity prices in it.
Q. Is that commonly called the Howard Bartell?
A. It is published by them, yes, sir.
Q. State the full name, please.
A. The Howard Bartell & Company, Incorporated.
Q. Now, if you will, proceed.
A. On May 25, 1939——

By Mr. Enoch:

Q. May I interrupt you just a moment?
A. Yes, sir.
Q. Are you giving the dates and about to relate the transactions about which you have previously testified?
A. Yes, sir.
Exam. Taylor: He is trying to correct it.
The Witness: I don't know that it is the exact transac-
[fol. 2290] tions. I just—I didn't give any real transactions in my testimony; I couldn't. I couldn't give any dates or anything, anything more than I have sold grain.

By Mr. Macaulay:

Q. Does this cover all the dates you testified to that you sold grain in 1939?
A. Yes, sir.

Mr. Enoch: I don't understand that we will be able to find out where the witness is wrong when he gets through testifying, if he can't identify the previous transactions about which he did testify.

By Exam. Taylor:

Q. Can you hook it up as you go along?
A. I don't think I specified any specific transactions. I just stated——

Q. You made general statements before?

A. Yes, sir.

Q. And now you wish to be specific, is that the point?

A. Yes, sir, that is it. First I will give the date of sale and now——

By Mr. Day:

Q. Mr. Donahoe, to refresh your recollection, you did say in one instance that you got 52 cents, didn't you? Was that just a part of your general statement, that you got 52 cents a bushel?

A. I think Mr. Brown asked me a question, suppose that grain were 60 cents, what would I get for grain?

Q. It wasn't a specific transaction?

[fol. 2291] A. No, he just asked me that as an example, as I remember.

By Mr. Brown:

Q. And the spread was 8 cents?

A. Yes, sir.

Q. And you want to correct that?

A. Yes, that is it. I will give the date of the sale and the date of the settlement for which I have my original sheets. Now, as to the date of sale, I have nothing but copies of my confirmations. I don't keep my confirmations after I settle up, but these confirmations were taken from Mr. Finnegan's books that he keeps. And then I have the number of bushels and the call bid on that day and the sales were as follows. On May 25, 19—.

Mr. Day: I think I will object to this. If these were taken from Mr. Finnegan's books, this witness certainly isn't competent or qualified to testify as to those records.

By Exam. Taylor:

Q. How do you hook it up with Mr. Finnegan's books?

A. Well, he keeps a sale book there.

Q. Supposing you had two sales on the same date or Mr. Finnegan had two—bought twice on the same date and both of them were 1,500 bushels, with different prices; how would you know which one was which?

A. Well, now, the way he does, he makes out a confirmation of each sale or certifies that, and I think to everyone.

He keeps the yellow copy and gives me the white copy, and [fol. 2292] at the same time he has a sale book that he puts the amount of this grain in and the name and the price on each date.

Q. And that is what you referred to to verify what testimony you are going to give now?

A. Yes, sir.

Exam. Taylor: Do you still make your objection, Mr. Day, after that explanation?

Mr. Day: Well, I will withdraw the objection.

Mr. Enoch: May I say this?

By Mr. Enoch:

Q. This is corn that was sold to Mr. Finnegan?

A. Yes, sir.

Q. And you have to go to Mr. Finnegan's books to find out how much you got from that corn?

A. No, sir, no more than to get confirmations of the sale date, the date of sale.

Q. You know how much you got for your corn?

A. Yes, sir, I have all the original settlements, sheets, myself.

Q. Why did you pay any attention to Mr. Finnegan's books, then?

A. Well, to get the date of the sale, to show how close it was to the Chicago market. I think you were one of the men that asked me if I could give a specific difference and that is the only way——

By Exam. Taylor:

Q. Specific date?

A. Well, a difference——

Q. And show the market price on that day?

[fol. 2293] A. That is right.

Q. And now you are complying with his request?

A. Yes, sir.

Q. So far as is possible for you to do?

A. As far as I could possibly do it, yes, sir.

Exam. Taylor: Proceed.

The Witness: On May 25, 1939, the date of sale, I sold roughly 3,000 bushels of corn.

By Mr. Day:

Q. What do you mean by "roughly"?

By Exam. Taylor:

Q. Can't you give the specific amount?

A. No, always on sales of corn in the country, no one knows exactly how much grain there is in a certain crib or bin, and you will go to the grain man and sell, for example, we will say, 3000 bushels of corn. Now, they allow you a leeway, as a rule, of 300 bushels under that or 300 over it.

By Mr. Macaulay:

Q. At that price?

A. At that price. Now, if I could only deliver 2700 bushels of corn, that would fulfill my contract. If I delivered 3300 bushels of corn, I would still get the price of the sale for the extra 300 bushels.

By Mr. Day:

Q. As I understand, you are not able to tell whether you actually sold 2700 or 3300 on that day?

A. Oh, yes, I have the—of course, I would know when the grain were hauled in and weighed.

Q. But you don't know now?

[fol. 2294] A. Well, you would never know when you sell corn, ahead of when you sell it.

By Exam. Taylor:

Q. Mr. Day asked you, does your record show now how much you sold?

A. Oh, yes, the date of settlement will show that.

Q. That is what he asked you.

A. Pardon me. Now, the sale date was the 25th. In fact, that was the day I hauled in the corn. The corn was being hauled in on that day. On the 26th, I settled for the corn and there 3239 bushels at 49 cents was the sale price. Now, the call bid on that day——

By Mr. Day:

Q. Which day?

A. On the 25th, the day I sold it.

By Mr. Macaulay:

Q. What type of grain was that? Will you state that?
A. That was sold as No. 3 yellow corn. The call bid on May 25th for No. 3 yellow corn to-arrive was between 49½ and 49⅝ cents. The next sale, in fact, the sale ahead of this, was made at $2200, but that corn was not delivered until June 7th or that was——

By Mr. Day:

Q. Let me understand you. You made the sale, the sale you made previously was on May 22nd?
A. Yes, sir.

By Exam. Taylor:

Q. This is another sale?
A. This is another sale, yes.

[fol. 2295] Mr. Day: I don't understand why he is going back.
The Witness: It just happens that the settlement date was after.
Mr. Day: All right.
The Witness: And the settlement date was June 7th. That was a small crib of corn of 685 bushels, which I also received 49 cents for.

By Mr. Day:

Q. How many did you sell at that time?
A. I would have to look at the confirmation sheet on that. 685 bushels, it says, and 40 pounds.

By Mr. Macaulay:

Q. Is that the confirmation showing?
A. Yes.

Mr. Day: Off the record.
Exam. Taylor: Yes.

(Discussion outside the record.)

Exam. Taylor: Put that on the record.
The Witness: I delivered just enough corn to fill that contract from this particular farm, and there was about a

truckload more which I hauled home for feed. Now, that is how that comes now, the call bid on that date to arrive, No. 3 yellow corn——

By Exam. Taylor:

Q. What date was this?

A. May 22nd, was 48⅜ cents. Now, on July 8th, I sold 5100 bushels of No. 2 yellow corn.

By Mr. Day:

Q. By the way, what kind of corn was this in the second [fol. 2296] transaction?

A. All yellow.

Q. Number what?

A. The first two transactions I mentioned were No. 3.

Q. Both No. 3?

A. Yes. The next transaction is No. 2 yellow, 5100 bushels at 45⅝ cents, which I settled for on July 11th and July 12th. The reason for that is, it came from different farms. One was shelled one day and one the next, and naturally I settled a day apart. And on one of the farms it was a poor crib and I didn't receive the 45⅝, but I received 43½ or a dock on that one.

Q. On all of it?

A. No, on one crib of 1127 bushels.

Q. 1127?

A. Yes, sir.

Q. You received what?

A. 43½ cents.

Q. And on the balance 45⅝?

A. On the balance 45⅝, yes, sir, and that was in two lots of 1100 bushels and 2103 bushels. The reason for those lots, it was from different cribs and different farms. And the call price on that date, which would be July 8th, for No. 2 yellow to-arrive was 47¼ to 47⅜ cents.

The next sale was October 19th, in fact I sold two lots [fol. 2297] on that day. In the morning, I sold a small lot of yellow corn for 46½ cents.

Q. What number yellow?

A. Well, No. 2 yellow.

Q. At what price?

A. 46½ cents.

By Mr. Macaulay:

Q. Was that old or new corn?

A. That was new corn. And I learned of this at noon. I went up again, we had some old corn and I went up and sold that at noon on October 19th for 46 cents. And the call bid on the date of October 19th for No. 2 yellow to-arrive was 48 cents for new and 48 cents for old.

Q. Do I understand that you have your original records on all of the transactions as to the settlements of those particular sales, and that those settlement sheets show the price that you received, the bid for the grain and the amount actually received by you?

A. Yes, sir, that is right.

Q. May I ask you this, Mr. Donahoe, did you pay the cost of shelling and trucking to the elevator yourself?

A. Well, in some cases—of course, those prices are delivered at the elevator. Naturally, the trucking and the shelling came out of me regardless. In a couple of instances, I see where the sheller would come to the elevator and collect his money, which I understand they have a right to do, [fol. 2298]to take it right out of the corn. I understand that is the law. Now, I don't know for certain on that but in other cases, the man that shelled and hauled the corn came to me directly and I paid him. In a few of the bills here, I noticed that the shelling and hauling was taken off right at the elevator, in other words, he paid the sheller and hauler right out of my money.

By Mr. Day:

Q. Could you go down the line and tell us which cases he took it out and which he didn't?

A. I could through the bills.

By Mr. Macaulay:

Q. Take your May 25th sale, which was settled on May 26th.

A. Yes, sir. No, that—the hauling was paid by me——

By Mr. Day:

Q. In that case?

A. In that case, directly, yes, sir.

By Mr. Macaulay:

Q. Your settlement of June 7th of your sale of May 22nd. What was the situation there?

A. I paid for the hauling myself. It isn't taken out here. But on that bill are some things that were taken out, and I wish to explain them.

In this farm that I run near town, there are times that I would come in and get a part of a load of shelled corn for feed. It was handier than shelling some myself, and some oats, and they were taken out on this bill. It shows right on the original bill where they were taken.

By Mr. Day:

Q. You mean the elevator deduced the cost to you of [fol. 2299] this corn and oats you bought?

A. That is right. I bought from the elevator. Now on the next date, where the settlement date was July 12th, the shelling and the hauling is taken ont there.

By Mr. Macaulay:

Q. And the discount noted also on that bill?

A. There is no discount on that one.

Q. You stated there was 43⅓ paid on the 1127 bushels?

A. Yes. Wait a minute, there is another bill there. That is the first bill. Then on the second bill, the shelling and hauling is taken out. But on the first bill of 2103 bushels, it is not taken out. On the second bill—

By Mr. Day:

Q. Now, wait a minute. The first bill you referred to in your previous testimony was 5100 bushels of No. 2——

A. That is right.

Q. That is the total?

A. That is the total sale.

Q. And the 1127 was the first at 43½?

A. At 43½ cents.

Q. And that was taken out, you say?

A. Less shelling and hauling. Just a moment. That was taken out. The one that was not taken out on that day, I say, is the 2103 bushels at 45⅝.

Q. The 1100 was taken out?

A. The 1100 was taken out and the difference in price shows on there too.

[fol. 2300] By Mr. Macaulay:

Q. That is the 1127 or 1100?

A. Well, they are both on the same bill. There is 1100 bushels at 45⅝ and 1127 at 43½, and the total.

By Mr. Day:

Q. And both those, they took it out?

A. They took it out of both.

Q. And on the other item, you paid the sheller?

A. That is right. How that happens there, the man that is on this particular farm owns the sheller and of course we settle that afterwards. That is how that had happened there. Then on October 19th, on the small amount, 375 bushels, I see the shelling and hauling is taken out at the elevator.

Q. On both the new and the old corn?

A. That is the new. And the old, yes, sir. Each bill is separately; taken out of all of it on those dates.

By Mr. Macaulay:

Q. What is the date of the settlement on your old corn that you sold on October 19?

A. The date of settlement on the new corn is the 19th and the date of settlement on the two lots of old corn is the 23rd.

Mr. Macaulay: That is all.

By Mr. Day:

Q. While you are on that one, will you tell us the quantity? You didn't name it on October 19th.

A. The quantity of the sale? You mean the confirmation that would be?

Q. No, the amount of corn you sold, new and old?

A. I sold 1700 bushels of old corn and the new corn, I [fol. 2301] said no amount a bushel. I just said No. 2 yellow corn. I will tell you, it was just a little bit in a little crib and I had no idea what it was. I told them it was less than 500 bushels.

Q. How much was it?
A. The price confirmation?
Q. Yes.
A. 46½ cents.

By Mr. Macaulay:

Q. The amount?

By Exam. Taylor:

Q. The amount of it?
A. Well, the amount finally was 375 bushels.

By Mr. Day:

Q. 375 bushels?
A. Yes, sir.

By Mr. Macaulay:

Q. That is of the new corn?
A. Yes, sir.

Exam. Taylor: That is all you have, Mr. Macaulay?

By Mr. Macaulay:

Q. That covered the rest of the farms that you spoke of, Walsh Estate, your own property?
A. Yes, sir.
Q. Catherine Donahoe?
A. My mother's and the Walsh Estate and mine, yes, sir.
Q. That is all the corn you sold during 1939 from those respective farms that you mentioned?
A. Yes, sir.

Mr. Macaulay: That is all.
Exam. Taylor: Cross examine. Mr. Day.

[fol. 2302] Cross-examination.

By Mr. Day:

Q. That made about 11,000 bushels you sold all together last year?
A. Somewhere between ten and eleven thousand bushels, yes, sir.
Q. You didn't have any white corn, as I understand it?

A. No, we don't.

Q. Are you a subscriber to this Howard Bartels' publication?

A. No, sir.

Q. You say you get it every day?

A. No, I didn't.

Q. How often do you see it?

A. Whenever I go up to the elevator, they have them there, they get them every day and of course, I check his price with——

Q. But you are only interested in the price, I suppose, at the time you are going to sell the grain?

A. That is right, yes, sir.

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch.

Mr. Cole: I have a couple of short questions.

Exam. Taylor: Mr. Cole.

By Mr. Cole:

Q. I believe during your direct you said that for several lots of corn on one day you got 48 cents, when the delivered price at Chicago was 50 cents. Did you hear the testimony that the charge for transporting that grain after it was purchased from you up the Illinois waterway was a cent [fol. 2303] and a half a bushel?

A. No, I didn't.

Q. You don't know what that charge is?

A. No, I don't.

Q. Did you hear that there was, in addition to that, a trimming charge of .62, .62 of a cent a bushel on the grain?

A. No, I didn't hear it, but I imagine there would be, yes.

Q. Do you know or do you understand from a selling price standpoint how it would be possible for you, at point of origin, to secure 48 cents a bushel for grain, if the lowest cost possible of transporting that grain came to 2.12 cents per bushel to get it to Chicago?

A. Well, I will have to state that I kind of wondered about that myself when I—but of course, all I have to go by is my—what he gave me for the corn.

Q. I believe you testified you sold that to Mr. Finnegan?

A. Right.

Q. When you sold that to Mr. Finnegan, did you know, or did you learn anything of Mr. Finnegan's necessities for having corn to make deliveries that he had previously contracted for?

A. Oh, no, I wouldn't know.

Q. You don't know anything about that?

A. No.

Q. Did you learn or did you know anything connected with Mr. Finnegan's contracts that he had outstanding for [fol. 2304] the sale of corn when he bought that corn from you?

A. Oh, no.

Q. Do you know what Mr. Finnegan, in turn, sold that corn for that he paid you 48 cents for?

A. No, sir.

Q. Are you familiar enough with the sales and purchasing and the handling of grain so that you might know that there would be a possibility that Mr. Finnegan had sold corn at some past time for future delivery at a contract price that he had arrived at, at a price that may have been different than the market price on the day that you sold him the corn?

A. No, sir.

Mr. Macaulay: Mr. Finnegan testified to his practice, sometime selling to arrive, and said that if it looked as though the premiums were going to increase, he would sell——

Exam. Taylor: Let the record speak for itself, Mr. Macaulay.

By Mr. Cole:

Q. Did you answer my question?

Exam. Taylor: In the negative.

By Mr. Cole:

Q. At the day you sold this corn, I am using this strictly as an illustration of other transactions. At the day that you sold this corn and you got 48 cents to you——

A. Yes.

Q. You testified that the Chicago market on that day was 50 cents. Now, do you know any possible way of getting [fol. 2305] corn from the point where you might deliver

to Chicago for even that difference of 2 cents that there was between the price that you secured, cash, and the Chicago market price delivered in Chicago that day?

A. Well, I am sorry. Of course, I couldn't answer that question. Here is all I was interested in, to get the most I could for my corn and that would be——

By Exam. Taylor:

Q. In other words, you are unfamiliar with what the rates via rail or barge or any other form of transportation would be?

A. That is right.

Q. Your point of delivery to Mr. Finnegan are the Chicago elevators, South Chicago elevators?

A. I don't even know where it goes.

Mr. Cole: That is all.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. Donahoe, on transactions which you say took place October 19th, from what document if any, before you, do you get the call bid 48 cents for new and old corn?

A. Well, as I said when I started my testimony, I am just getting that from the way I figured out myself from this merchandise sheet. They have here bids on cash grain to arrive, corn.

[fol. 2306] Q. What document is that——

A. Yes, sir. This trade bulletin.

Q. All right.

A. You say on October 19th. Well, I sold No. 2 yellow corn on that date. And you can look at this here and they show for 10 days' shipment, old crop No. 2 yellow, a cent and three-quartres under December. Then of course I take the close of December on that day and take a cent and a quarter under that price. The close in December –that particular day was 49⅞. It is three-quarters and a cent off of that—a cent and three-quarters off of that would be 48 cents. That is where I arrived at that.

Q. There isn't any December price, is there, futures price for new and old corn? How do you get a call bid by basing on December if it is for new and old corn on October 19th?

A. Now, I am not—that is put out, as I understand it, by houses that want to buy this grain and that is the way they price it. As I understand it, a corn man could sell to a grain house here in Chicago that corn to arrive within 10 days at that price. Now, that is my understanding of it.

Mr. Macaulay: Can we ask Mr. Brown if that is a regular practice, to buy corn on a basis with reference to the next delivery date? Isn't that a fact, Mr. Brown?

Mr. Brown: He is talking about the call price for acceptance before opening the next morning.

[fol. 2307] Mr. Macaulay: Well, the cash price in Chicago, isn't that the December future less this basis of one and three-quarters?

Mr. Brown: I can't tell what it shows there.

Mr. Macaulay: If it shows there it is one and three-quarters over, that would be the method of determining the value of cash corn on a particular day, when you either added to or deduct——

Mr. Brown: No, he says the total price there that went out on the evening of October 19th, after the close, was 1¾ cents under December. He has given us the December price. He took the cent and three-quarters price. That is the price that is put out, but it must have been accepted before activities began the next day. It must be accepted by somebody in the call that takes that bid and agrees to deliver it.

The Witness: Of course, I take it for granted when I sell this corn to Mr. Finnegan that he sells it. That is not for me to know. Of course, that is where I arrived at my price.

By Mr. Brown:

Q. You don't know what he got for it?

A. Oh, no. All I would use that for was to see if I thought I were getting a good price.

Q. To see you weren't being gypped on the to-arrive price?

A. That is right. That is what I use that for.

Q. But the figures you have shown, you have given here that you got, are no criterion of what the difference was between the price you got and what yellow corn sold for in Chicago, actually sold for on the day that your corn [fol. 2308] arrived in Chicago by barge, does it?

A. Well, I wouldn't know as to that.

By Mr. Macaulay:

Q. You sell your corn for delivery in Morris and not to-arrive in Chicago?

A. That is right. Of course it loses its identity, and as far as I am concerned, when I deliver it to him——

Mr. Brown: In other words, he shows by comparison between the cash prices that he got and what the to-arrive price was on the day before he sold. That is all he shows but he does not show the difference between what he got and what the grain that he sold actually sold for in Chicago.

Mr. Macaulay: Is there a better way of stating that, Mr. Brown, from this Howard Bartel service? I am not sufficiently familiar with it to know what the cash price was in Chicago on the day of the sale. If he is stating it incorrectly, would you correct him?

Mr. Brown: I am not stating his case at all. I am simply saying that he cannot tell. He first said his spread between his price and the Chicago cash price would be 8 cents a bushel. Now he finds that is too great and wants to change that figure, but he can't tell you now or tell the record what the difference was between what he got and what his grain actually sold for in Chicago, delivered in Chicago.

Mr. Macaulay: That is true, but he can tell what grain of like kind sold for in Chicago for that day.

[fol. 2309] Mr. Brown: No, because he doesn't know whether that bid was accepted by anybody.

Mr. Macaulay: He doesn't need to know. He knows if the bid was accepted, it would bring that price, because this record is the best evidence of that.

Mr. Brown: I don't think it is the best evidence at all, because you don't know that it was the same price grain that was contracted for that went out on the evening of October 19th.

Mr. Enoch: That is all I have.

Mr. Brown: I am not questioning his figures or account, not at all.

Exam. Taylor: Have you any cross examination, Mr. Brown?

Mr. Brown: No.

Exam. Taylor: Anything on redirect?

Mr. Macaulay: I think we have a sufficient showing as to the Chicago price. That is all.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

Mr. Belnap: Mr. Rich.

C. J. Rich, recalled, previously sworn, testified further as follows:

Direct examination.

By Mr. Belnap:

Q. You are the same Mr. Rich who has previously testified in this case?

A. I am.

[fol. 2310] Q. Mr. Rich, you testified previously, you gave in part only the disposition outbound of grain covered by some of the barge billing of yourself, which is a matter of record in this proceeding. Will you please refer to the exhibits where you did not give the complete story and tell us the disposition as to the balance of the grain?

A. Exhibit No. 32, the portion not shown yesterday, was 616,680 pounds of oats; originating at Morris, Illinois, on November 25th.

Q. Can you give the exhibit number?

A. Yes, 32; I gave that. That entire amount went out, was shipped beyond Chicago via rail lines to destinations in CFA and Trunk Line Territory, such as Lexington, Kentucky, Bellevue, Ohio, Front Royal, Virginia, and Baltimore, Maryland.

Exhibit No. 32, there was 235,070 pounds of soy beans not spoken for yesterday, which entire amount was switched cross town to the Archer-Daniels-Midland Company on the St. Paul Railroad.

Q. What is the Archer-Daniels-Midland Company?

A. They are processors of soy beans, making crude and refined oil and soy bean meal. They also handle grain.

Q. Have you here——

By Exam. Taylor:

Q. Just a second. Was the weight on the beans cancelled by the inspection bureau, do you know, or did the Archer-

Daniels Company get the benefit of some proportional out [fol. 2311] as well?

A. We would turn the tonnage over to Archer-Daniels-Midland and they would use it out as they saw fit.

Q. Would those do that through the transit bureau?

A. Yes, sir, to show a change of ownership.

By Mr. Belnap:

Q. To comply with the change of ownership rule in the transit tariff?

A. That is right.

Q. And then their outbound commodities are subject to certain reshipping privileges under the complete rate application of the tariff?

A. That is right.

Q. Which exhibit was this on? This is 32?

A. 32.

Q. Refer to the copy of the Allied Barge Corporation freight bill shown of record as exhibit 32. Do you have here for inspection the original of that bill?

A. Yes, sir, showing the endorsement on the reverse side.

Q. And how does the endorsement read? Tell exactly how it is written.

A. There is a certificate placed on the reverse side of the original barge bill which reads, "Pay to the order of" and then a blank line in which the Norris Grain Company's name was written in pencil and underlined, the name Lowell Hoit and Company.

[fol. 2312] Exam. Taylor: Do you wish to inspect that? Do counsel wish to inspect that? It is introduced merely for inspection?

Mr. Belnap: Yes.

By Mr. Belnap:

Q. Mr. Rich, have you the cancelled——

Exam. Taylor: Just a minute. Let me see that, Mr. Belnap, please.

Let the record show that the original of exhibit 32 shows over the words "Oats and beans", "Bulk Commodities"; over 19,271.08 bushels, the word "Weight"; over the figure .014 the word "Rate"; and over the last column the word

"Totals." The endorsement on the reverse side of this paper merely states "Pay to the order of Norris Gr."

The Witness: Abbreviation for grain.

Exam. Taylor: And under that, Lowell Hoit and Company, just a rubber stamp. Now, whether that is a substantial compliance with the rule of the tariff as to the transfer of the right and title to the billing is some question.

The Witness: That is the general practice of all commission houses in respect to rail traffic, and accepted by their auditing departments.

By Exam. Taylor:

Q. They all merely rubber-stamp their bills in that fashion?

A. That is right.

Mr. Brown: This isn't grain, you know, where the title passed when it went into the elevator, where the title passed before. In other words, that same sort of an endorsement [fol. 2313] would appear by a receiver of a carload of grain which he sold for Norris for delivery to his elevators.

Exam. Taylor: I wanted it on the record so it will be clear. Very well.

By Mr. Belnap:

Q. Mr. Rich, have you here original checks covering payment of freight rates to the A. L. Mechling Barge Line about which the Examiner asked you yesterday?

A. I have.

Exam. Taylor: Exhibit them to counsel before you go into it, please.

Mr. Belnap: What was the last I asked him?

(Record read.)

By Mr. Belnap:

Q. Which inbound shipment is covered by check No. G-23478?

A. The shipments received in exhibits 33 and 34.

Q. Will the total amount of that check be equal to the inbound tonnage shown on those exhibits as multiplied by the rates which Witness Mechling stated he assessed from those origins?

A. No, sir. The correct extension of that check would be $461.17.

Q. State it separately for the two exhibits.

A. $219.46 for exhibit 34 and $241.71 for exhibit No. 33.

Q. How much was deducted from the correct extension in remitting to Mr. Mechling?

A. There was $57.73 deducted from the two totals.

Q. For what reason?

[fol. 2314] A. In payment of services rendered by us at our Irondale elevator, occasioned by Mechling Barge Line spotting a loaded barge at our elevator and our employees thinking the barge belonged to us or the grain belonged to us, proceeded to unload it. After having unloaded 7208 bushels and 52 pounds, they found out their error and the——

Q. Did the barge or grain belong to some other elevator?

A. The grain and barge belonged to some other elevator.

Q. Then what did your people do?

A. We loaded the grain back into the barge and then it proceeded on its way to its correct destination and we assessed Mechling for the expense that we went to in the handling of this grain, which totalled $57.73.

Q. That was made up of what items, as to character?

A. Made up of in weighing and out weighing; in inspections and out inspections; in trimming and out trimming and for the use of the power shovels at the elevator.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Belnap: Do you want this check copied or is that sufficient?

Exam. Taylor: I thought you were going to copy all of them.

Mr. Belnap: We can. You would like to have them all copied right in the record?

[fol. 2315] Exam. Taylor: After you get all through with this.

Mr. Belnap: I thought I would put them right in where each one would be described.

Exam. Taylor: All right, do it your way. Go ahead.

Mr. Belnap: Mr. Examiner, we have here only the original of the check referred to. May we have the face of it copied in the record at this point? The reverse, I might

say, carries nothing but bank stamps and then this endorsement of Mechling, "Pay to the order of Farmers Bank, Sheffield, Illinois, A. L. Mechling Barge Line. A. L. Mechling." Just copy the check.

Exam. Taylor: Copy the check.

(Which document reads as follows: "Chicago, November, 29, 1939. No. G-32478. Bank of Montreal, Chicago. Pay to the order of A. L. Mechling Barge Line, $403.44. Norris Grain Company • • • 403 Dol's 44 cts Dollars. The signature: Norris Grain Company, D. H. Lipsey.")

By Mr. Belnap:

Q. Now, Mr. Rich, I show you original check No. G 23670, and ask you as to which of the exhibits shows the inbound tonnage as to which that check was given in payment of freight rates?

A. That applies against exhibit No. 35.

Mr. Belnap: I ask to have that check copied in the record, Mr. Examiner.

Exam. Taylor: Yes, sir.

(Which document reads as follows: "Chicago, April 11, [fol. 2316] 1939, No. G 23670. Bank of Montreal, Chicago. Pay to the order of A. L. Mechling Barge Line, $425.23. Norris Grain Company • • • four twenty-five Dol's 23 cts. Dollars. The signature: Norris Grain Company, D. H. Lipsey.")

By Mr. Belnap:

Q. I now show you an original check No. G 23867. What exhibit does that refer, as far as the payment of freight charges is concerned?

A. That check applies against exhibit No. 36.

Mr. Belnap: We ask to have that copied in the record, Mr. Examiner.

Exam. Taylor: It will be copied.

(Which document reads as follows: "Chicago, April 15, 1939, No. G 23867. Bank of Montreal, Chicago. Pay to the order of A. L. Mechling Barge Line, $434.94. Norris Grain Company • • • four three four Dol's cts. Dollars. The signature: Norris Grain Company, D. H. Lipsey.")

Mr. Belnap: That is all I have from the witness, Mr. Examiner.

Mr. Day: May I see those three batches of documents that you have?

Exam. Taylor: Off the record.

(Discussion outside the recorded.)

Exam. Taylor: Are you ready to proceed? Mr. Belnap, are the endorsements on each of the checks the same? You read the first one but I don't believe you stated whether the [fol. 2317] others were the same.

Mr. Belnap: The succeeding two checks, Mr. Examiner, have, as far as Mechling is concerned, the same endorsement stamps. They are different in the bank stamps on the back of them.

Exam. Taylor: All right, does that conclude your direct?

Mr. Belnap: It does, sir.

Exam. Taylor: Cross examine. Mr. Day.

Cross-examination.

By Mr. Day:

Q. Mr. Rich, the consignment weighing 1,581,590 pounds is covered by which check?

A. The check applying to exhibit No. 36 covers the payment of $434.94. That is it.

Q. And of the grain in that consignment, approximately 1,200,000 bushels went out of Chicago by steamer?

A. That is right.

Q. And the balance were rail shipments?

A. That is right.

Q. To Baltimore, Pocomoke, Maryland, Elkins, West Virginia and Buckhannon, West Virginia?

A. That is right.

Mr. Belnap: That has all been explained, Mr. Day, in the fashion you just asked him the question.

Mr. Day: The steamer?

Mr. Belnap: Yes, the steamer and the territory location of the destinations, and illustrative destinations in each [fol. 2317a] territory.

Mr. Day: Off the record.

Exam. Taylor: Yes.

(Discussion outside the record.)

By Mr. Day:

Q. If the steamer tonnage is shown and the direct general location, for instance, do you show that some of this grain went into Paris, Illinois?

A. Yes, I did.

Q. You mentioned Paris?

A. Yes.

Exam. Taylor: Is that all, Mr. Day?

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch?

Mr. Enoch: I have nothing.

Exam. Taylor: Mr. Cole?

Mr. Cole: No questions.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Mr. Belnap: Mr. McClintock.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Proceed.

J. O. McCLINTOCK, was sworn and testified as follows:

[fol. 2318] Direct examination.

By Mr. Belnap:

Q. What is your name, please?

A. J O. McClintock.

Q. What is your business?

A. I am employed by the Continental Grain Company at Chicago; have been employed by them for the last two years, preceding which I was associated with the Farmers National Grain Corporation and the Grain Stabilization Corporation in Chicago.

Q. In what line of work?

A. In the handling of cash grain; buying and selling of grain as relates to the Farmers National and the Continental Grain Company.

Q. Are you a member of the Board of Trade?

A. I am a member of the Board of Trade, have been a member of the Board of Trade about six years, I believe.

By Exam. Taylor:

Q. What is your capacity with the Continental?

A. I am the cash grain man of the Continental Grain Company. I do the buying and selling of the cash grain.

By Mr. Belnap:

Q. Will you please take up one by one the protestants who are associated with Continental in this proceeding, and identify them.

A. The protestants for whom I am to speak in a general way as their interests appear in this case are the Santa Fe Elevator Corporation—do you want a description of their activities or just enumeration of them?

[fol. 2319] Q. I would like to have you tell who they are.

A. Well, Santa Fe Elevator Corporation is a firm in business in Chicago, conducting a general grain business and operate the Santa Fe Elevator in Chicago. The Stratton Elevator Company. They were former elevator operators in this market, but at this time they do not operate an elevator at Chicago but do operate an elevator in the Chicago area at Schneider, Indiana. They likewise operate an elevator at Milwaukee. They are members of the Board of Trade and are one of the protestants. E. H. Bacon Grain Company. They operate an elevator in the South Chicago district and carry on the same general class of business that others, other protestants do. Rosenbaum Brothers. They operate elevators in Chicago are engaged in the general grain business. Cargill, Incorporated, operates a large grain elevator in Chicago and transact a general grain business. Norris Grain Company operate several elevators in Chicago. The Continental Grain Company operate the Rock Island elevator under lease and do a general grain business. The B. A. Eckhart Milling Company, another of the protestants, is a concern that engages in the milling business, flour milling business, and in so far as this particular case is concerned, their interest is only general. They are not engaged in the merchandising of the raw grains but rather the manufactured products from the grain.

Q. Limiting yourself to the protestants who are in the general grain business and operating elevators in the [fol. 2320] Chicago district,—I might say when I refer to protestants hereafter, I am referring to that group only—what is the extent of their elevator capacity with relation to the total elevator capacity at Chicago?

A. The protestants here operate an elevator capacity of approximately 32 million bushels. That is, as related to the total capacity of the market, I believe, is an approximation of 50 million bushels. The records—I wasn't very clear on that. They have some official records here issued by the Chicago Board of Trade but there was some six million bushels of this capacity lost during the year 1929 by fire.

Q. What year?

A. Or 1939; 1939 by fire, and these houses that were lost in this fire were all operated by this group of protestants, by two of the protestants. So that I would say in approximation, the relation of the capacity of the elevators as operated by the protestants as compared to the total would be 32 million as compared to 50 million.

Q. Does the latter figure include the elevator capacity of those who are engaged primarily in the processing of grain?

A. No, we have a distinction here in elevator capacity as to public and private elevator operation. Now, of this 32 million here that I have stated is operated by the protestants in this case, approximately 25 million bushels of that 32 million is public elevator storage. As a matter of fact, the [fol. 2321] protestants in this case do operate and control the total public storage in the market. When I refer to public storage, I mean that it is storage that is qualified as public either under the state or Federal Government and is that space which can be used to make deliveries in satisfaction of future contracts.

Q. What other functions are performed by the public elevators?

A. Of course, the public elevators are employed in our general business operation of buying and selling grain, in the accumulation and the distribution of the grain, and it is likewise used for storage by others. The public elevator space is just what the name implies. It is a public elevator and the services of that elevator are available to the public at published tariff rates.

Q. Are the public elevators also available for the purpose of transferring grain?

A. Well, I included that in my statement, that the services of these elevators are available for anyone that wants to use them in any connection, either for storage or transfer, whichever it may be, either one or all.

By Exam. Taylor:

Q. What do you mean by "transfer"?

A. I mean—we are supposed, for example, to illustrate that, I will say that some grain dealer in Kansas City wanted to sell wheat to a miller in Buffalo and he wanted to ship it to Chicago by rail and then put it on lake steamers here. That would require a transfer from cars to steamers. [fol. 2322] Or if he wanted to ship by barge from Kansas City to the same destination, or if you wanted to ship it by barge to Chicago and thence down to Indianapolis by rail, he could employ the services of this elevator to effect those transfers.

Q. From one form of transportation to another?

A. Yes, or from the same form to another where it might require transfer for some special reason.

Q. Are the public elevators which the protestants operate extensively used for the purpose of such transfers?

A. Yes, quite extensively. That varies, of course, from one year to another. They are quite extensively used not only just for the purpose of transfer but for the purpose of storage.

By Mr. Enoch:

Q. Just a minute, when you say "transfer," you mean physical transfer?

A. Yes. I mean they perform the operations of effecting this transfer of grain that I have just illustrated.

Q. And that is wholly apart from the storage?

A. In the tariffs published by the elevators, the public elevators, they include in their transfer charge 10 days' free storage. They are at liberty, under that tariff, to ship grain in here today and have it unloaded, say, today, and so far as the charges that were assessed against them, they would be no greater if we loaded that grain back into some other movement of transportation 10 days from now than it would if we loaded it back into these same vehicles tomorrow.

[fol. 2323] By Mr. Belnap:

Q. And what is the charge for that transfer service, including 10 days' free storage?

A. A cent and a half a bushel.

Q. Thus far, has that service been utilized in connection with movement of barge grain into Chicago, then out by rail?

A. By the public or by those interested people?

Q. People who employ the public elevator as a public elevator.

A. There has been to my knowledge been such business moved through the Chicago market, but I don't recall that we effected any transfers from barges for shipment beyond for the account of others.

Q. At other lake ports, is it common to use public elevators in the merchandising of grain in order to transfer between—from water to rail or vice versa?

A. It is more than common. It is the customary practice for, say, elevators like ourselves, the protestants in this case, if they want to reach markets beyond Buffalo or beyond Georgian Bay ports in reaching the consuming territory and in that marketing we employ the movement out of Chicago by lake, we do engage the services of public elevators at the gateway wherever it may be, to perform a service for us that is similar to that which I have described can be had here in Chicago. For example, in merchandising our grain into New England Territory, we find that most of the season of open navigation and even during the winter months, that we can best reach that territory, so far as [fol. 2324] transportation costs are concerned, by engaging the lake service out of here to Georgian Bay ports, of which there are a number, and thence making the shipments to the consuming territory by rail.

That same principle is employed when we wish to reach the Trunk Line Territory that can be reached through the Buffalo gateway. It is the practice of the dealers to carry some stock of grain over there, perhaps for the merchandising during the winter months. We move that grain over there preceding the close of navigation, and that is done quite extensively so far as the New England Territory is concerned, because it is more—it is farther removed from points of production and is considered almost a year-around deficit area, and are required to obtain their grain supplies,

principally corn and oats, from the producing section of the central states here.

That is not quite true of Buffalo because Buffalo can—I mean the territory east of Buffalo, have available for their supplies the Ohio and Indiana Territory which they can draw on during the early part of the year.

Q. Are your public facilities in Chicago available, for example, to a grain merchandiser at Indianapolis, if he desires to have grain moved in by river and to Chicago and out via rail?

A. We would be very happy to perform that service and we do hold ourselves out as being not only willing but solicit that kind of business.

[fol. 2325] Q. If that were done, it would be similar to the situation which obtains in Chicago as to transfers of grain other than this ex-barge, and to the situation at Georgian Bay and at Buffalo which you have just described?

A. That is correct. There is nothing to prevent, as far as facilities are concerned, to prevent any dealer or individual, as far as that is concerned, that wishes to participate in any movement of grain into Chicago from which he thinks he might derive a benefit by having available for him these public facilities. They are at his disposal.

Q. Are all of these public elevators so located as to have access — both the river and the lake?

A. They are.

Q. Are they all equipped to load grain out by water?

A. You are referring to public elevators?

Q. I am referring to public elevators of the protestants.

A. Yes, sir, they are all equipped to load out by lake and I believe—well, they are not all equipped to unload from water.

Q. Can you identify those which are equipped to unload from water?

A. Santa Fe Elevator has a marine leg and I shall refer to marine leg here as the instrument by which transfers from water to the elevator are made. The Santa Fe elevator has equipment—has a marine leg. The Calumet house of the Rosenbaum Brothers, that is a house—one of the [fol. 2326] houses, I believe, that was affected by the fire, and has for a portion of the year of 1939 been out of commission, but the house is being reconstructed and it is being equipped with a marine leg. The Norris Grain Company have, I believe, two houses that are equipped to unload

grain from water. The Rock Island elevator, operated by the Continental Grain Company, is equipped to load out or unload from water. And I believe that is the extent—Cargill. Cargill, operating the Northwestern elevator is likewise equipped to unload from water.

By Exam. Taylor:

Q. What was that last, Northwestern?
A. Cargill operate the Northwestern elevator.

By Mr. Belnap:

Q. Did you say how many houses Cargill had which were so equipped?

A. Cargill only operates the one house here, I believe; Northwestern elevator.

Q. I thought you said several. I didn't get it.

Is transportation by water very largely availed of in the merchandising of grain generally, Mr. McClintock?

A. Yes, as far as Chicago is concerned and as far as all locations are concerned that have water transportation available, it is employed very extensively in transportation of the grain in its movement from points of production or nearest points of production to or towards consuming territory, which applies not only to domestic business but to export business.

Q. That extensive use is predicated, I assume, on the fact [fol. 2327] that the cost to the shipper is ordinarily less via water than via rail?

A. That is the case generally speaking. I think we have one particular instance here, may be on exhibition, where the water-rail haul through Chicago to, I believe it was Baltimore, happened to be a little bit cheaper than where more water transportation was involved through the Buffalo gateway. That happens to be an unusual condition and is based on the fact that that cost was unusually high, due to the heart of the journey, that went through the great lakes and the unusually high rates that we experienced on the great lakes this season. Generally that is the case, that the all-water route or the rail-water route is cheaper than the all-rail route.

Exam. Taylor: Is that a good breaking point?
Mr. Belnap: Yes, that is all right.

Exam. Taylor: Recess at this time until 2 o'clock.

(At 12:30 o'clock, p. m., a recess was taken until 2 o'clock p. m.)

[fol. 2328] Afternoon Session

2:00 o'clock p. m.

J. O. McClintock, resumed:

Direct examination (Continued).

Exam. Taylor: All right; gentlemen. Are you ready to proceed, Mr. Belnap?

By Mr. Belnap:

Q. Will you now take up, Mr. McClintock, and describe generally the merchandising activities of the Chicago elevators who are here protesting?

Exam. Taylor: Before he does that, he has one question that I asked him off the record if he would distinguish between public and private elevators.

Mr. Belnap: All right.

The Witness: I referred earlier to the elevator capacity under which the protestants in this case operated; and mentioned too that a certain percentage of this capacity was what was known as public storage. I mentioned also that there was some 50,000,000 total storage in the market. The common distinction in the recognized trade here betwen the private and public elevator is that the private houses are to a very large extent associated with the individual's business who either owns or operates that house. It is not public in the sense that it is required under the rules here, the rules of the Chicago Board of Trade to [fol. 2329] qualify that elevator as the space through which delivery of grain can be made in satisfaction to future delivery contracts. May I give a little example: the hedging element enters into the handling of grain; and our next delivery month in Chicago is the May futures. Corn we are buying today, and the time up to that delivery period, is hedged. When the delivery period comes around we exercise or decide whether we shall make delivery of that grain to fulfil that contract that we have made in the futures market, or buy back the contract that we originally made as a head and transfer it to some more deferred delivery

month. But if we elect to make delivery of this cash grain to satisfy this open contract that we have in the future market, then the rules of the Board of Trade prescribe the requirement of the house through which such deliveries can be made; and in that sense I speak of them as public houses, covering the requirements of the rules of the Chicago Board of Trade; and they are also public houses in that they are available for the public to obtain service.

By Mr. Belnap:

Q. Would you give an example of the kind of business in which these people are engaged, in what you call private houses?

A. With an exception or two, I would say that the private elevator capacity owned or operated by others than those which I have mentioned here, the protestant in this case, was used primarily in connection with their own business. In most cases it is associated, operated by people who have [fol. 2330] a manufacturing activity, for example B. A. Eckhart Milling Company here, who is one of the protestants. They have storage, but it is used generally in relation to storage of their own raw material, such as wheat, which is later converted into the manufactured product. There are other examples, such as the malt houses, and some of the larger manufacturers here, such as the Corn Products; they have storage, but it is used mainly in connection to their own manufacturing operations. There are some exceptions to that. Star Grain Company, for example, own an elevator, and it is located on the water. They can load both in and out by water, but they are not a public house in the sense that they would fit the example that I referred to awhile ago.

Q. Now, Mr. McClintock, will you take up the merchandising of grain, cash grain in the Chicago market?

A. In general, the practice of the elevators who are represented in this case, or their business is conducted along similar lines, the elevator capacity is used to store grain intermittent between the time we accumulate the grain and the time when we may make final disposition of it. It goes without saying, of course, that we do not sell all the grain here today; and there are periods that we recognize as accumulating periods, and periods that we recognize as distributing periods. But all the time it is the effort of the

operator or the elevator to keep the plant so functioning [fol. 2331] that his business will be as consistent as conditions under which he operates will permit. The ideal situation, of course, is to have a rather consistent overturn. In other words, our profit, if any,—our ideal is based on volume. That is the whole fundamental of the grain business, it is based on the volume handled. There are many conditions that enter into that situation: crop conditions in one section of the country compared with the other, and transportation conditions, determine whether or not Chicago is keeping itself in the channel where the producer moves his grain to the consuming territory.

In this respect, it so happens that the territory affected here by river transportation is in the same territory as that affected by these intrastate or, as they are called in the grain trade, the lake local rates. If we would refer to Mr. Tannehill's exhibit No. 3, you will note that he has outlined the territory here from which lake local rates apply. It is noticeable there that that is the territory that is most closely related to the Chicago market in the terms of geography. In other words, if it could be said that there is any territory that is more definitely related to Chicago than any other territory, it would be this precise area.

Q. Taking that area, Mr. McClintock, let us start out with the buying of grain in all the various ways you buy it; take up the customers involved, the delivery, your futures contract, how you merchandise your grain, and your ship- [fol. 2332] ments; let us have that as a background.

A. Of course, we have the mechanism of our Board of Trade here. It is not divisional to the extent that you could say this group performed that service, and some other group performed that service, and hit it right down to a fine line. But in custom and practice it has worked out somewhat to that degree. We have the elevator and shipping interests here who are protestants in this case, are interested in the rate situation from the standpoint of getting grain into Chicago, and we are interested also in a very emphatic degree in having rates in effect that will permit us to escape with this grain after we get it in here. Now, the custom pursued in a general way in accumulating supplies into Chicago, has been about like this; we have one group of individuals and firms who confine their activity quite largely to bringing grain into the market. Those are termed receivers.

Q. Mr. Brennan was an example of a receiver, was he not?

A. Yes, Mr. Brennan; and as a matter of fact, I think the list that he presented and stated he was representing could all be classified in this category. On the other hand, you have the elevator group which I just mentioned, who do not to any great extent engage themselves in the business of going out to the country elevator and engaging in bringing that business into Chicago. Their activity is confined to buying the grain here at Chicago, scoring it, and [fol. 2333] merchandising it to all the possible points that the rate structure of the market will permit us to reach.

Explaining that custom a little further, the elevators, just for a concrete example,—we will say the day after the market closes the commission houses will go to the tables of the elevators, and secure the bids on which they can work overnight. We give them a bid. Sometimes that is called a call bid, or a bid to arrive. In that case it must be posted on the Board.

Q. In which case?

A. In the case that it is designated as a call bid, or a bid to arrive. To qualify as a call bid, it must be posted on the board.

Mr. Day: Do they mean the same thing, a call bid to arrive?

The Witness: Not exactly. If you just let me go a minute, you will see. That bid that is posted there on the board may have been posted by Continental Grain Company; that may have been the bid that was posted by us; that is an indication that we are willing to pay that price for corn or wheat or whatever it may be. But that does not mean necessarily that grain is not sold into the market, or that we would be unwilling to pay more for the grain than what is indicated on the Board. So, as I say,——

By Mr. Belnap:

Q. Right there, you say that is your offer to pay that for [fol. 2334] the grain; at what point?

A. Delivered Chicago. And I say, that call bid does not always represent the price which I would be willing to pay for corn if it was offered, or that some one else might be

willing to pay for it. So that the receiver may be certain as to the highest price that he can sell corn at, after the close of the market today up until the time the market opens in the morning, they go around to the various elevators, and they get what Continental is willing to pay for grain, and they get what Rosenbaum Brothers or any of the buyers that is interested in that particular activity. And with these bids that they obtain from us they transmit them to the country elevators. And for that service in the event that they acquire grain, there are rules covering the commission on which they are permitted to charge for that service. They look upon it as though they are performing a service for the fellow in the country by getting in that bid, and a service to the elevators for acquiring the grain for us.

Q. And what is that rule?

A. Well, it is known as the Commission Rule, I believe is what they call it. The rule on corn and wheat, I believe, is a cent per bushel on the rail grain; oats, I believe is three-quarters of a cent. And on barge grain and lake grain the commission is one-half cent.

Q. That is per bushel?

[fol. 2335] A. That is per bushel. Now, that is the customary procedure that joins up the activities of the two—I don't know whether you could call them elements or divisions, or whatever they are. They just happen to be engaged in that particular class of business, and they dovetail into one another in the fashion I have described.

Q. What happens,—you have got a call bid out; you say that is always posted on the Board?

A. If it is a call bid, it is posted,—if it is a posted bid.

Q. You hold yourself out to take grain at that price for what period of time?

A. Well, that bid is posted during the session, and after the session as well. Usually a posted bid is not so many cents or so many dollars; the bid is in relation to the futures. For example, we would be bidding now on the basis of May corn; and we would say that we were willing to pay a half cent under the May futures for corn delivered Chicago. That bid would be accordingly posted, which would indicate that the seller could know even during the session how the market was going on, and sell us corn at half a cent under whatever the quotation of May corn might be.

By Exam. Taylor:

Q. At that particular time?
A. At that particular time.

By Mr. Belnap:

Q. That is the futures, and corn is fluctuating during that [fol. 2336] time?
A. That is right.
Q. It does after the close of the session?
A. After the close that bid, if it is left there, it is predicated to mean that corn will be taken over night at that basis, relative to the close.

By Exam. Taylor:

Q. For example, one-half cent under the closing bid of corn?
A. That is right; if May corn closed at, we will say, 57 cents, the bid, as regards to that call,—the bid would be 56½.

Mr. Cole: May I ask a question for clarification of something here at this point?
Mr. Belnap: Surely.

By Mr. Cole:

Q. Mr. McClintock, you said that first there were those firms known as receivers, which firms were interested in getting the grain into the market.
A. That is right.
Q. Then, second, there were those elevators that operate like you do; and you said, then, after that, that during the day the commission houses would come over to you and inquire for the bids; now, are those commission houses, this first group that you termed receivers?
A. Rather synonymous, in our language; I meant the same group, the receivers.
Q. When these commission houses or representatives of [fol. 2337] receivers come over to get your bid, which they then transmit to the country, and for their services you say they earn a certain commission which is in cents per bushel according to how the stuff gets in there,—when they buy that grain on that bid, if they are acting as merely commissionmen and commission merchants, do they buy that

for you after they learn your bid, or do they take title to it until it gets in here and then let you know that they got it?

A. The mechanics of that is this: we will suppose some one representing a receiver house would come up to me and say, what are you going to pay for corn; what is your basis on corn? And I will say a half under May. He goes out and buys that corn on his own, and he takes the commission. If half under May at that time means 56½, it means that he goes out to the country and bids 55½ delivered Chicago; and he is the principal in the case. He is the principal in that transaction, as regards the country elevator man. If he elects to sell to me on that bid, he comes to me and sells at a half cent under May corn. And he is the principal in that trade, too, between Continental Grain Company and his firm.

Q. May I ask this, just as a matter of information, at this point: suppose now it is half past two, and I come to you and I ask you for your bid; and you say half a cent under May futures. I learn that; so I got out and I bid in the country for my grain, and the fellow down there gets my [fol. 2338] bid which is a half cent under May, less my commission; that I tell those fellows down there in the country to scramble around and get it for me; and then I don't learn whether I got any corn on that bid until tomorrow morning; and tomorrow I come back and the Exchange is open again, and things are again different; does that bid you told me this afternoon, does that still hold, so that tomorrow when I come and I say, Mr. McClintock, I have got a barge of corn now. Does that bid hold good?

A. In practice it works this way: that receiver knows by the practice that that bid is only good until the opening of the market the next day.

Q. Yes.

A. As a matter of fact, these bids we put out after the close are more or less intimations of what we would be willing to pay. We do not agree to take a million bushels of corn at that price. He so protects himself by passing the bid out as such, that he thinks he can sell corn at 56½, permitting him to pay 55½; and when he hears from the country next morning that he can buy 5 cars of corn at 55½ and sell to me at 56½ he calls me up to see if the bid is still good; and we take the grain.

Q. Then he calls you up to sound you out again, and then goes back in the country?

A. Generally they have contacts down in the country, have their own people and connections established down [fol. 2339] there. A great many of them have wire connections, so their connection is about the same as if they were sitting in the office. That is the way it works out in practice.

Mr. Cole: Thank you.

By Mr. Belnap:

Q. And these receivers that offer you grain, do they get some received by rail, some received by barge, and some received by lake?

A. Well, we have bought—I don't know that we ever had bought any grain from a receiver that came in by lake; I do not recall that we did. But we have bought a lot of corn through receivers, a lot of grain, I will say, some corn, from receivers; and we buy most of our corn that we buy to arrive through the receivers.

Q. Made both as to rail corn and as to barge corn?

A. That is right.

Mr. Enoch: Is the testimony that he buys barge corn through a receiver?

The Witness: Yes, sir; that is correct.

By Mr. Enoch:

Q. What is the difference between this call bid and what you just referred to, the two arrive; or is there any difference?

A. No, I wouldn't say there was any difference in the practice. I think it is referred to in the rules as a to-arrive bid.

By Mr. Belnap:

Q. Well, when you are dealing with a receiver, and he [fol. 2340] calls you up the next morning and asks you if you are still in the same mind, and you say, I am, and he says, here is five cars, and you say, I will take them, where does he have to deliver them?

A. We generally specify 10-day shipment. In other other words, the terms of that contract specifies the price, the grade, where it is to be shipped; in this case it is to be

Chicago, and it will be Chicago weights and grades; and the date, the time within which that grain is to be shipped.

Exam. Taylor: I do not see just how you could have delivery in any May futures, the next morning.

The Witness: Well, you see, we couldn't under those terms. But deliveries of future contracts are generally made up from the accumulations that you have made prior to the delivery date. See, you can deliver any time during the month. The corn that I deliver on May contracts I might have acquired in January or February.

By Mr. Belnap:

Q. Well, is this corn you acquire from receivers to be shipped 10 days, is that what you consider a future contract?

A. No, not in a strict sense. It is a future delivery contract in cash grain; it is not a future delivery contract in the sense that it is a futures transaction, made in the futures market. We have the futures market.

Q. That corn is cash corn; you know you are going to get [fol. 2341] it; the physical corn is going to be delivered to you?

A. That is right.

Q. And it will be delivered to you whether you operate a private house or a public house?

A. Oh, certainly. In other words, when we buy that corn we may not have any definite idea just exactly what we are going to do with it. We do hedge it, however; when we buy the corn, we hedge the corn.

By Exam. Taylor:

Q. Here is what I couldn't understand, Mr. McClintock: you had been talking about the amount of the commission, and you said that you based the bid a half cent under the May futures on corn. The future bid was 57; a half cent under was 56½. This man was to get a commission of one cent, so he could buy at 55 delivered; now, that is on a May future.

A. The price is predicated on the trade of the May futures at the time the transaction was made. Now, with us trading in May is going on now.

Q. Yes, but he has to deliver that within 10 days.

A. Actually, the shipment from the country, the contract is that he has to ship that corn from the country within 10 days of the contract; that is the terms. So I bought that corn today, and 10 days from now it was shipped from the country; well, in two or three days after the time it was shipped it would be in here; and then in another two or there days it would be down at the elevator and be unloaded. But I cannot deliver it on May contracts until the month [fol. 2342] of May comes around.

Exam. Taylor: It is all right now.

The Witness: So far as the May futures contract is concerned, it terminates in May so far as my cash contract is concerned with this receiver, it terminates in the 10 days. I have to carry that corn until I can deliver on the futures contract.

By Mr. Belnap:

Q. You use the May future only as a convenient means of stating the price you are willing to pay for cash grain?

A. That is true. The nearby future, whichever way, is the index that we use in determining the value of grain.

Q. When it comes to naming the price, you use May future only as a convenient means of naming the price at the close of the market; if May future was 57, and you buy one-half cent under, you could just as well say, I will pay 56½?

A. We could just as well, and generally do.

By Exam. Taylor:

Q. You would never use July at this time as the base price for cash delivery?

A. There are times when we would use July; supposing a receiver would come to me and say, what will you give me for June corn, for June shipment. I would not predicate my bid on the May price, because May will have expired before he ships that corn. So I will use the future that is most closely related to the shipping time of his corn. That is the way I could avail myself on hedging two transactions [fol. 2343] together, which in that case we would use July.

By Mr. Brown:

Q. Would it clear it up any if you said this: that if you have January corn now you had hedged in May,——

A. In fact, that is what it is.

Q. —you sell that corn tomorrow and take off your May hedge?

A. I think maybe I didn't make that quite plain: you see, the fact that I bought this 5 cars of grain and hedged it on the May future does not necessarily obligate me to deliver that corn on that future. I can buy back that futures contract. My reason for that, suppose tomorrow or the next day I sell that particular corn, in which event I would buy back my futures contract.

By Mr. Belnap:

Q. That is, by hedging you mean when you buy this grain you obligate yourself to deliver an equal amount of the same at some later month?

A. If I have not bought the contract back.

Q. But at the time you buy the cash grain, is that when you hedge it in the futures market?

A. That is right.

Q. And when you hedge, you immediately sell an equal quantity for future delivery?

A. That is right; I am obligated to make delivery only in the event I do not buy that future delivery contract back.

Q. Then, if before May comes along you bought the corn that is coming to your elevator, you have resold it,——

[fol. 2344] A. In which event, then, I would buy back my futures contract.

Q. At the same time you sell cash grain?

A. That is right.

Q. And is it that situation, the sales and resales which lead to the——

A. Well, that is the mechanics that is involved in the merchandising of grain; because the business is handled in a volume, but it would be impossible to match up a sale of corn identical with the purchase of that particular corn and do it at a time when you would not be exposing yourself to the general fluctuation of the market. We might buy a hundred, two hundred corn some morning maybe 5 or 10 minutes before the market opened. There would be very little possibility of going out and merchandising that corn before the market opened. So we hedge it, and in that way we protect ourselves against the ups and downs of the market, whatever they may be, until such time as we can go out and merchandise the grain.

Q. Hedge until you can go out and make a profit on the grain?

A. That is right.

Q. That is your business?

A. That is our business, and that is the general fashion on which the grain business is conducted. And it does not necessarily mean that the grain has to come to Chicago to employ that same method of marketing. The Omaha merchant, the Texas merchant, the Indianapolis grain mer-
[fol. 2345] chant, whoever he may be when he buys grain in a general sense he uses the same system of hedging operations that we do.

Q. Did I understand you to say if an Indianapolis merchant buys grain out in Illinois and shipped it direct to Indianapolis, at the time he made that purchase he would at once sell an equal amount of futures on the market?

A. That is right.

Q. Is that practice followed as to cash grain you had them deliver to your elevator, regardless of the method of transportation used, what rate you pay?

A. Oh, yes.

Q. That has nothing to do with it?

A. The origin or the method or the mode of transportation used in getting it to our elevator has nothing to do with the advisability of hedging that grain; we do as a practice hedge it.

Mr. Enoch: May I ask a question?

Mr. Belnap: Yes.

By Mr. Enoch:

Q. Could you hedge it if you had a private house and not a public house?

A. We could hedge it, but we could not make delivery. We in that case would be in the same position as the man in Indianapolis.

Q. So that it is not practical to hedge the grain that you put into your South Chicago elevator without it being regis-
[fol. 2346] tered as a public elevator?

A. Oh, yes. No man in the grain business would think of operating in any other fashion; just as I explained to you, when an Indianapolis man out here, when he buys 50,000 bushels of corn in Illinois, or Indiana, wherever he may have bought it, he hedges that corn, although he knows at

the time he cannot effect delivery out here; he uses that as an insurance against the fluctuation of the market.

Mr. Enoch: May I ask you off the record.
Mr. Enoch: May I ask you off the record:

(Discussion outside of the record.)

By Mr. Belnap:

Q. As I understand it, your discussion off the record with Mr. Enoch, the question of whether you receive any grain into a private or public elevator has nothing to do with whether you hedge it or not?
A. Nothing at all.
Q. You hedge it in either event?
A. Absolutely.

Mr. Enoch: That was not my question.
Mr. Belnap: Then you ask him on the record.
Mr. Enoch: I will take it up with him on cross-examination.

By Mr. Belnap:

Q. Well, as to grain in a private elevator in Chicago which has been hedged, that grain can be delivered on a future contract, can it not, by cross town switching to a [fol. 2347] public elevator?
A. Yes, it can.
Q. Take this same price situation about which you talked when you were naming the price for grain delivered to Chicago, to be shipped within 10 days, on 56½ cents per bushel; can you offer that same price to the country elevator man?
A. No; if we bid the country elevator man direct we deduct the commission the same as the commission man does. In other words, the bid to the country is the commission less than the gross bid we have put out.
Q. That is the rule of the Board of Trade?
A. It is.
Q. If you wanted to you could bid to the country elevator grain, could you not?
A. Oh, yes.
Q. But under the rules, if you got a posted bid up here on the 56½,——

Exam. Taylor: No, he had it at 57; keep it at 57.
Mr. Belnap: It was half a cent under the May future.

Exam. Taylor: And the May future was 57 cents?

The Witness: That is right.

Mr. Belnap: His posted bid is 56½ cents?

The Witness: Yes; it would be a half cent under that future.

By Mr. Belnap:

Q. 56½ would?

[fol. 2348] A. Yes, delivered Chicago.

Q. The rule is that when you first post that bid of 56½ cents here, delivered Chicago, you won't offer more than 55½ direct to the country elevator?

A. That is correct.

Q. In the case of barge shipments, where the commission rule provides half a cent a bushel only, it would be the same?

A. In that acse it would be the same, only it would be a half cent instead of a cent.

Q. In other words, if you got 56½ cents posted here,——

A. The bid to the country would be 56.

Q. Both bids being delivered Chicago?

A. That is correct.

By Exam. Taylor:

Q. In the latter case the commission is yours, is it not, if you buy it direct from the country elevator?

A. Well, yes; we earn the commission; that is in the price. If we buy the grain direct, then we have made the commission in the price by virtue of having bought the grain for a half cent less than the delivered price here in Chicago. We make the half cent that the commission man would have made if it had come through him.

Q. Is that a rule of the Board of Trade?

A. That is a rule of the Board of Trade.

By Mr. Belnap:

Q. When you make a bid for cash grain delivered at Chicago, take rail grain, what consideration do you give [fol. 2349] to the inbound rate structure on that grain, and how does that affect the price either as you name it or as you arrive at it?

A. Well, we guage our buying with what we can at the time accomplish, or hope to accomplish with the billing that this shipment involves.

Q. Maybe you better go forward then and tell what you do with the grain after you get it, Mr. McClintock; and then go back to the point of what consideration you give to the billing when you buy it.

A. Mr. Belnap, I think we might bring this whole thing out here: I started on a little display here that I think maybe we can tell this little story as to how the Chicago shipper is affected and what consideration he gives to billing, by referring to this situation that we are confronted with right at the present time. I don't know just exactly what point you want to bring out here.

Q. I would rather get a general description of the business before we go into the particular effect of this situation, Mr. McClintock.

A. Well, as I said, the interests of the shipper in the Chicago market is based on the volume; that is, he is interested in getting as much volume through the elevator, and that means through the market because he acquired his grain in proportion to the general volume of business that is going through the market. And our interest in that is not [fol. 2350] just to buy grain and put it in our elevator down here. Obviously, we have got to do something with it before we have completed a transaction that compensates us in any degree. Now, there is two things that an elevator operator wants to do, especially a public elevator operator; he wants to have stock that are suitable for delivery on future contracts, and he wants to have shipping rates out of the market that will permit him to reach as many destinations as can possibly be reached through the gateway that he is operating, which in this case as affects the protestants here is Chicago. Before we would consider buying any grain, we must first give consideration as to what we can do with that grain; and usually that situation is governed by the outbound rates that the market provides.

But we are confronted with a little different situation, and I am going to get back to this point here, whether you like it or not, Mr. Belnap. It goes back here to this exhibit number 3 of Mr. Tannehill, where he has outlined the territory from which this intrastate corn moved. Now, the picture there is very plain, that that is the territory that is

most closely related to the Chicago market in every respect. If you could say that you had something laying right in your lap, that would be where the business from Chicago—that would be how this business would be termed. Because that is strictly Chicago territory, if Chicago has any territory that could be called strictly its own. Now, as I said, [fol. 2351] the elevator man buys the grain because he wants to merchandise it beyond the point where he is accumulating it. And the thing that determines how much or what territory he can reach is determined by the rates; and normally that is considered from the standpoint of what the outbound rates actually are. But here we have a situation that the character of the inbound rates are such that they do not entitle us to the outbound rates that is commonly accepted as the means of escaping with your grain from a concentrated point or a rate-break point.

Now, this river corn that we have been talking about here, a very large percent of it originates in this same territory. Now, the elevators here have been able to take quite a large volume of this lake local billing corn here at a price equal to, or very nearly equal to the price at which the very best billing that we have coming in here would bring. Now, that is brought about by the fact that we have the escape out of Chicago with this particular billing which provides a penalty on the outbound shipment by rail,—we have an escape over the lakes. So the lake billing corn having a cheap rate in here, and which in my judgment was the means of attracting a lot of corn into Chicago, we have that escape by virtue of the fact that we have acquired a substantial volume of business over the river that gave us the billing with the two things that I told you that a grain man wanted to do: he wanted to have in his elevator a stock of grain that was deliverable on future delivery contracts; [fol. 2352] he wanted a stock of grain that he could either merchandise out of here by water or by rail. Now, I think that these elevators—it is my opinion that the elevators represented here as protestants in this case are related to the Chicago Board of Trade as a union, in that we are both interested in a volume. We have the situation here that does provide a volume for the Chicago market; and we have the situation, as I just explained, that provides us an escape with both kinds of this billing. Now, if the protestants are unsuccessful in their efforts here,——

By Exam. Taylor:

Q. By protestants, you are talking about the Chicago protestants?

A. Yes, Chicago protestants; elevator protestants. If we are unsuccessful here, then this barge grain that has been coming in here and enjoying the reshipping privileges and qualifying it as proper billing for delivery on future contracts, in case we lose them it throws the barge billing corn in the same category as the lake billing corn, but even subject to a more severe penalty. In fact, it ceases to be a penalty when you get it up to 8½ cents; it is a blockade. In other words, then the shipping interests which are the protestants, and I might mention right here that the records of the weighmaster's office showed that last year the protestants in this case here, so far as the Chicago elevator interests are concerned, shipped out of this market 83 and a fraction percent of all the business that was [fol. 2353] shipped out of Chicago in the form of grain.

By Mr. Belnap:

Q. What was the bushels involved; do you have that?

A. Well, out of the total shipments of 115 million and some odd bushels the total shipment of the protestants was 97 million plus. It figures out 83.44 per cent. Taking up the thought there, where we left off, that leaves the elevators for whom I am speaking here in the position that all the grain originating within this territory prescribed here,—and it is a very large producing section; as I said, the corn most favorably located to come in to Chicago, it leaves the elevators that I represent here in the position that regardless of whether we acquire the grain by barge or on the lake local billing, it has all got a blight on it for the two things that an elevator must be able to do out of this market. I mean have billing that can qualify on a future delivery contract. And I think I ought to explain here that under the rules here when you make a delivery on a future contract you have to provide the recipient of that delivery with billing that will take him out of here on the reshipping rate.

Q. Would you explain that just a little further; what reshipping rate, and to where does the rule require?

A. Trunk Line territory, I believe. There might be other qualifications in it, but we are obliged to provide bill-

ing that gives him an escape here with that grain on the [fol. 2354] reshipping or proportional rates that are in effect at the time of the delivery.

Q. In other words, make legal delivery on one of your future contracts?

A. Take an example: if I deliver corn that I have brought in here by barge, in case that these rates that we now enjoy are taken away from us, if I tender that corn on delivery, whoever receives that corn would have to pay, if he elected to ship it to Trunk Line territory, 34½ cents. The rule says that I have got to give him billing that takes 26 cents. If I deliver corn that came in here on lake billing, say from Morris, Illinois—that has been a popular point—from Morris, Illinois, that has paid a 5-cent intrastate rate in here, and I deliver corn on that bill and he orders it out of here to New York, the shipper is billed on the difference between 5 and the Illinois proportional rate in here; and he in this case would be the shipper. But I effected that delivery on that grain in the house, in the elevator. So the recipient of that grain would be the shipper when he moved it out, and the Rock Island Railroad would bill on him. If I gave him this 5-cent local bill in order to make that shipment against, the railroad would bill him for 4½ cents. Yet, the rule says that I have got to give him billing that will get to New York for 26 cents; where in effect, he would be paying 26 plus 4½ cents per 100 that the Rock Island would bill him on [fol. 2355] for it. So the elevators are stymied if they cannot acquire some billing in their own front yards that permits them to do the thing that it is necessary to do to operate a public elevator in this market.

Q. Insofar as those two illustrations which you gave,—insofar as the elevator which delivers on future contract, if you deliver barge grain and it had no privilege under the local rate you would have to make up the difference to the extent of 8½ cents if you were going to deliver that grain?

A. That is true.

Q. Against your contract price?

A. That is true.

Q. And in the case of the lake local you would have to make up 4½ cents as against your contract price?

A. Well, it would work out this way: when the shipper found out he had billing he was penalized on he would come

back to me and call my attention to this rule and say, "Here, you didn't give me billing that I could get out of here on in the fashion that the rules prescribe, so you owe me 4½ cents."

By Exam. Taylor:

Q. Would the result of that penalty be the fault of the carriers, or because of the Board of Trade ruling?

A. It would work out like this: you can see, otherwise—here is how it would work out in practice: the Board of Trade rules, as I understand them, are made to protect the public. When a buyer comes in here and buys a future contract and accepts grain on it, he is entitled to know what it [fol. 2356] is going to cost him to get that grain out of this market. And that is the reason the rule was prescribed, fixing the obligation on the party that delivered that grain. Otherwise, you can see that the futures market here would be useless; because, although he might buy corn at 57 cents, which would mean that that was the price that the corn would cost him in store at the elevator in Chicago; but he is not going to use that corn in the elevator in Chicago, he is going to ship it out; so he is entitled to know what it is going to cost him to ship that corn.

By Exam. Taylor:

Q. Does the Board of Trade rule mean that this corn that moves in here must be able to move out on the cheapest rate to the eastern destinations, which in your case is 26 cents to New York, for example?

A. In that case it would be the cheapest rate so far as the rail is concerned.

Mr. Enoch: Isn't this the fact: that while you, if you want to deliver on a future contract barge grain, have it move at only the difference of what you paid in, of 8½ cents; Mr. Bacon, with his contract grain, if he delivers on a future contract has to pay the whole 8½ cents, hasn't he?

The Witness: If he delivered it that would be exactly so; that is, if the recipient of that elected to move that corn out by rail.

Exam. Taylor: Five minutes recess.

(A short recess was taken.)

[fol. 2357] Exam. Taylor: All right, Mr. Belnap; proceed.

By Mr. Belnap:

Q. Mr. McClintock, do you on occasion deliver on your future contracts, instead of buying back the contract?

A. We do.

Q. It is your desire to always be in a position to be able to do that, is it not, if you want to?

A. Yes, absolutely.

Q. Now, would it be possible to make your contract for future deliveries unless there was a definite understanding as to the kind of freight rate that grain, if delivered, would take out?

A. Well, I can see where a future delivery contract is a contract—it is a purchase and sale contract. I can see where the party on the other side of the contract would be at a very decided disadvantage if he didn't know what rate it was going to cost him to get out of Chicago with the grain that he was taking on that contract. And that is the reason why the rules provide that the seller of that contract must provided the buyer with a certain kind of billing.

Q. That particular billing is based on the proportional to New York, Trunk Line territory?

A. That is right.

Q. If a man actually wanted to go into Central Freight Association, you would have still made a good delivery whether you gave him trans-Mississippi billing or Northwest billing or Illinois billing?

[fol. 2358] A. We consider it so.

Q. That is, he hasn't a perfect assurance what he is going to pay; but he does know this, that if he goes to Trunk Line he can go there on the 26-cent basis?

A. That is correct.

Q. You have described this situation generally; now, do you have a peculiar condition that you have not described when you come to the last month for deliveries of the old crop and then look forward to the first month for the delivery of the new crop?

A. Well, there is a situation that exists between adjustments that might occur between old crop and new crop periods which might make the delivery privilege, I wouldn't want to say the only market, but perhaps the best market that would be offered for disposing of the grain that you

might want. And as I have said before, we determine what we buy, or how much we buy, by what we can do with it. An example in that situation would be, for example, the adjustment between—well, we will take wheat, for example; which we have in effect right now: the new crop futures on wheat are being quoted; July wheat, which represents a new crop month, is selling at a discount under the May wheat, which is still an old crop month. Those spreads vary quite considerably. We have seen the nearby future of the old crop sell at even a much higher premium than now prevails.

[fol. 2359] Exam. Taylor: Just a minute, before you go into that: your old crop futures might be any kind of wheat; it might be Northwest wheat, it might be trans-Mississippi wheat?

The Witness: That is right.

By Exam. Taylor:

Q. It might be Southwest?

A. Yes.

Q. Whereas, your July wheat would necessarily be Southwest wheat, wouldn't it?

A. No; we do not designate them insofar as the trading month is concerned as old and new crop; but they fit that condition. We know that there is no new wheat produced that is available in May for delivery on May contracts.

Q. Do you have any Northwest wheat that could be delivered in July, New Northwest wheat?

A. No, I would not say so. But there are various kinds and variety of grain that would be qualified for delivery on the future contract. I have not seen the market for three or four days; but the last time I looked at the market, July wheat was selling about 2½ cents under May.

Now, I would just like to go ahead here and explain that we buy wheat during April and May and hedge it in the May future. Now, if we could merchandise that wheat out during that period, all right; but if we cannot merchandise it the likely thing to do is that we will deliver on that contract, because the next delivery contract is, I think, at the [fol. 2360] present time, about 2½ cents under the May. So from an elevator standpoint it would work out that if we transfer or hedge—if we could not deliver and could not sell it, then, our next escape would be to transfer our

hedge from May to July, in which event it would lower the inventory value of our wheat to the degree that July was selling under May. So that is why it is desirable at all times to have your stock covered as much as possible with a billing that will qualify for delivery.

By Mr. Belnap:

Q. After you get the grain in your elevator, Mr. McClintock, where do you merchandise it?

A. Well, in a general way, Chicago territory is New England territory that we reach by rail and by water and rail out of Chicago. And when I say water and rail, most of that business is done through the Georgian Bay ports. Some goes through Buffalo and Oswego and into the Trunk Line territory; we merchandise both by rail and by water and rail to Buffalo. And we go into Central Freight Association territory; and we go into—well, that would be included in the Ohio River points; and occasionally we go beyond those points into Southeast territory. But generally our territory is east and northeast of Chicago. We are able to sell industries located near by Chicago, the white corn industries, such as Milwaukee and Battle Creek and Kankakee; the corn industries located at Harris, Illinois, and Indianapolis, and all points like that that have industries in that particular territory.

[fol. 2361] Q. When you sell cash grain you deliver somebody, on what basis do you sell it?

A. Well, we sell it on the basis of transportation costs, figured against the price that we want for the grain in Chicago. For example, if we should get an inquiry from a mill at Indianapolis that wanted to buy, we will say 50,000 bushels of wheat, and he would probably specify in that inquiry that he wanted a special kind of billing; maybe he wanted a billing that would permit him to go to Pittsburgh, or Columbus, or some point like that, with his product cheaper than he could on some other kind. So if we get an inquiry like that, I get in touch with our traffic man and he tells me whether we have got that kind of tonnage, and what we can deliver the corn through Indianapolis to these destinations that he refers to. If we are selling to a man in New England, there is any number of substantially large industries in the interior of New England states, which commonly take the Boston rate point. And on those we sell at a de-

livered price, taking into consideration in our price what it costs us to reach those points.

Q. You sell at a delivered Boston basis?

A. That is right; if we are selling to——

Q. Just in that situation, you would then be obligated to deliver the grain to the man at billing which would take it to Boston at no cost to him?

A. That is correct; we sell it on the Boston freight rate, [fol. 2362] that is the practice. If we are selling a man in Trunk Line territory, the same practice generally works out.

Q. Except you are then selling——

A. On the 26-cent New York rate, or 24-cent Philadelphia rate, or some point he might specify in his inquiry; but at all times our delivered price is based on the cost of delivery to there; Chicago cost, plus getting it there, so far as transportation—we sell to Buffalo on a c. i. f. price delivered Buffalo. In that we take into consideration the cost of the lake transportation to Buffalo.

Q. Is that the usual basis you sell to Buffalo?

A. That is the usual practice we sell to Buffalo. We do sell grain beyond Buffalo; we sell it c. i. f. Buffalo, we sell it f. o. b. Buffalo, we sell it base Philadelphia or New York ex-lake out of Buffalo; which means that the corn has had a water movement into Buffalo.

Q. You can only do that in the period of open navigation?

A. Either that, or we may have to put some stocks over there preceding the close of navigation to merchandise out during the winter months.

Mr. Brown: When you say over there, you mean in storage at Buffalo?

The Witness: In storage at Buffalo.

By Mr. Belnap:

Q. There is a very substantial storage of grain at that point, is there not, which goes out via lakes?

[fol. 2363] A. Yes, there is a very substantial amount of grain which moves not only out of Chicago but from other lake ports, such as Milwaukee and Duluth, Fort William, Port Arthur,—all of the ports this side of the lakes.

Mr. Enoch: In these last remarks you are thinking of wheat more than you are of corn, are you?

The Witness: No, sir; if I was thinking of anything at all, I was thinking of corn.

By Mr. Enoch:

Q. Not out of Fort William?

A. Not out of Fort William; but so far as the Chicago interests are concerned, as applied to shipments out of Chicago, I would say the amount of corn was very much greater than the amount of wheat shipped out of Chicago.

Q. But any corn stored at Buffalo; that is what I had in mind.

A. Oh, stored corn?

Q. Yes, at Buffalo?

A. Well, there is a lot of corn shipped out of Chicago and stored at Buffalo.

By Mr. Belnap:

Q. There has also been substantial quantities of corn come down the lake from Duluth, have there not, in recent years?

A. To Buffalo?

Q. To the lower end of the lake?

A. Yes, Duluth has shipped a lot of corn during the past two or three years.

[fol. 2364] Q. Is it the practice in the trade that much of that grain will come down during the period of open navigation, going into store for the purpose of being redistributed in the winter months, during the close of navigation?

A. There is quite a practice along this line; and that same condition applies to putting grain in Georgian Bay elevators preceding the close of navigation, with the purpose of merchandising it into New England territory.

Q. During that season of the close of navigation, if you were to merchandise out of your Chicago elevator, will you be selling in competition with that grain that would be in store at Buffalo?

A. During the winter months, if we want to make sales to points that can be reached from Georgian Bay or Buffalo, or any of the other eastern ports, we are in competition with that business during the winter months, when our only escape, our only means of participating in that trade is by rail.

Mr. Brown: Right there, will you permit a question, to clear up: is it not also customary during the winter months to have grain stored in boats at Buffalo that were sent down near the close of navigation?

The Witness: Yes; I said in storage; I meant to include in that quite a substantial volume of grain that is sent out of Chicago and other lake ports as well to Buffalo and retained in the lake vessel during the winter period months, [fol. 2365] maybe during the whole period, or maybe only during a portion of the period. But there is a substantial volume of business handled in that manner.

Mr. Enoch: May I ask a question right here for clarification: Mr. McClintock, am I in error? I understood you to say that during the season of open navigation arrangements are made to store grain at Buffalo, at the foot of the lakes, at the Georgian Bay elevators, so that during the closed season of navigation deliveries may actually be made on contracts, on sales in Eastern Trunk Line territory, and on deliveries and completion of sales in New England territory; aren't you the one that does that storing—isn't that your grain?

A. Well, we have done some of that business. But as a rule, we don't want to in the fall move all of our business over to Buffalo and Georgian Bay ports; we still want to remain in business in Chicago.

By Exam. Taylor:

Q. But that opportunity is open?
A. But that opportunity is open.

By Mr. Enoch:

Q. Mr. McClintock, as to the same thing, just after that, Mr. Belnap asked this question: he asked whether during the season of closed navigation, if you were in competition in completing the sales with the merchandise that had been stored at Buffalo and at Georgian Bay ports; Mr. McClintock, are you actually in competition with that merchandise that is stored there?

[fol. 2366] The Witness: Yes; because there is other merchandise stored there, probably a great deal more stored there by people that operate exclusively in Buffalo, than the amounts that might be sent there by us.

Mr. Belnap: Aren't you going into cross-examination?

Mr. Enoch: No, I just want to clear this one thing up; it is not cross-examination, I just want to get it right where it belongs on the record. It may hurt, but it is not cross. Don't you generally carry enough of your own stocks there so that you can make your own deliveries in that territory?

The Witness: No, I wouldn't say that we would regard it as good business to put as much corn over there as we might anticipate that would be used. Because the grain business has a peculiar way of changing its channels. That is, we might get corn over to Buffalo that appeared all right; but there might be a condition develop that that corn might be worth more at Chicago, freight considered, than it is at Buffalo. As a matter of fact, we got that condition right now.

Exam. Taylor: Can you hold the balance of it for cross-examination?

Mr. Enoch: I would like to suggest, inasmuch as this is particularly a corn case, we speak about corn, or oats, or barley, or wheat, rather than to use the term grain.

Mr. Belnap: I don't understand it is a corn case;
[fol. 2367] I understand that these rates are applicable on grain, all kinds.

Mr. Enoch: Your understanding is absolutely right, as far as the application of rates is concerned.

Mr. Belnap: Corn has been the largest volume moving, but they applied to other grains.

Mr. Enoch: I still think you ought to refer to corn, rather than include them all.

Exam. Taylor: That is because the bulk of the grain from the river points, barged to Chicago is corn?

Mr. Day: No one who testified here said there was anything but corn.

Mr. Belnap: Mr. Benton testified and showed the wheat.

Exam. Taylor: Go ahead.

By Mr. Belnap:

Q. Do you sell grain to those who store it at Buffalo, and who are engaged in the same line of business you are?

Mr. Enoch: I object to that question; I think it ought to specify whether he is talking about corn?

By Mr. Belnap:

Q. Do you sell all kinds of grain, the various species, including corn?

A. Yes, we do.

Q. To those people?

A. We sell to people over there that not only are in the merchandising business, but we sell quite extensively to some of the large processors over there who employ per-
[fol. 2368] haps the same method of storage over there that we have just referred to. They might buy half a million or a million bushels of grain for shipment out of Chicago just preceding the close of lake navigation, and use it in their business as they needed it during the winter months, and would unload it from the lake steamers only at the time they did require it.

Exam. Taylor: Now, gentlemen, I wish you would proceed in a more orderly fashion and allow Mr. Belnap to complete his direct, so far as possible.

Mr. Belnap: I am perfectly agreeable, Mr. Examiner, if they are only wanting to explain something; if they want to quarrel with the witness, then I would prefer that we——

By Mr. Belnap:

Q. During this last year Continental received a substantial volume of grain via barge on the Illinois River, did it not, Mr. McClintock?

A. Yes, sir.

Q. You have some of that grain still in storage at your elevator in Chicago?

A. We do.

Q. Do you sell some of that grain on c. i. f. basis to people at Buffalo who are engaged in the same business you are?

A. We have.

Q. And who during the winter months will be competing with you, they via rail and you via rail, to Trunk Line territory?

A. That is true.

[fol. 2369] Q. Well, when you come back to this question of buying and selling grain from the standpoint of billing, you have told us what kind of billing you have to have in order to comply with futures contracts, and the kind of

billing you held yourself out to supply when you sell cash grain for delivery in the East; now, how does that affect you when it comes to buying grain, particularly from the standpoint of the kind of billing it will have, when it arrives in Chicago?

A. Well, I would just like to read a little figure into the record here; we have these figures that I quoted awhile ago where the protestants would ship 97,000,000 bushels of grain out of Chicago in 1939, compared with a total of 116,000,000 bushels. I got these figures from the official records of the Board of Trade, and as broken down between rail shipments and lake shipments. Out of this 97,000,000 bushels,——

Q. Now, this is all grain, is it?

A. Yes—44,000,000 was shipped by rail and 52,000,000 bushels was shipped by lake. That is round figures on it.

Q. That is for the calendar year?

A. That is for the calendar year.

By Exam. Taylor:

Q. 1939?

A. 1939. Now, that rail shipment there is quite a little higher than some of the figures indicated here by—I don't just recall what witness it was—that referred to the cancellation of our barge billing, a very large percentage to [fol. 2370] the lake outlet. I would just like to explain here the condition that permitted the shipment by rail out of here in the substantial volume that these figures indicate. These lake local rates, or intrastate rates, whatever you want to call them, went into effect in the spring of 1939; April, I believe, prior to that time, I am not in position to say how long but it occurs to me that during the year of 1938 there were not lake locals in effect, with the exception, I believe, of a short period that the Rock Island had in a lake local rate from a few points. So the billing that we employed, a very large percent of it, in making these 1939 shipments, was acquired in 1938, and the early spring of 1939, before there was any penalties inflicted on this territory adjacent to Chicago. It would have been quite impossible for the elevators to engage as extensively as they did in rail shipments out of here had it not been for that fact. While it is true the records show that this lake local billing was used to some extent to certain destinations, yet

based on our own experience that was—that situation was rather insignificant, compared to the total volume of rail shipments out of Chicago. Now, billing is an important thing to the Chicago market and the Chicago dealer and the elevator man in particular. The elevator man is interested in the rate situation up to Chicago——

By Exam. Taylor:

Q. Well, then, you are talking about the Chicago elevator man and not the country station elevator man?

[fol. 2371] A. No, the protestants, I will say. The protestants in this case are interested in the rate up to Chicago.

Exam. Taylor: We have some farmer protestants.

The Witness: Well, the Chicago protestants; will you put it that way. I think the farmer is interested too. The to Chicago, because it is the transportation cost that meas-Chicago protestants are interested in the rate structure up ures the distance from the point where this grain is produced up to Chicago. In other words, it reflects the advantages or disadvantages, whichever it may be, as to the possibility of getting corn into Chicago. The elevators are interested in getting that corn into Chicago. That is why I say that we are interested in the rate structure up to Chicago. We are likewise, and very definitely so, interested in the rate structure out of Chicago. I think I explained that in some degree awhile ago, just what our interests are. And in that respect I think the interests of every member of the Chicago Board of Trade, receivers and shipping interests, should be parallel. We are interested in volume. It is fundamental, it is the fundamental on which we thrive or decline; and the rates out of Chicago definitely influence the possibilities that is offered for the shippers, the protestants in Chicago, as to the possibilities that they may have as grain merchants. It should be our—it is to our interest to keep Chicago in the path or in the channel through which grain moves from production to consumption. And rates, [fol. 2372] transportation costs are the factors that determine whether or not we are in that channel, the degree to which we are in it, and the time we can remain in it. Now, that is a fundamental, as I see it, that is definite and eternal. That situation has just got to exist; otherwise the market declines in proportion to the disadvantages that it suffers in the way of rate structure. There is a condition there

that I might say that is of very definite concern to the producer. We have a contract market here at Chicago; it is at a rate-break point. If the producer is to gain any benefits from low cost transportation, that condition must be reflected in a low cost up to a contract point. Beyond the contract point the consumer would benefit in relation to the cost out of that contract market. The corn intrinsically has the same value in Chicago, based on the theory that it was all going to be consumed in Chicago. The Chicago futures market is the barometer that determines the value, quite largely at least, determines the value of the grain in that particular point where that contract future trading is done. The value of that we just established there awhile ago, 57 cents,—now, the farmer under conditions that are most beneficial to him can get that 57 cents less costs that are involved in getting his grain up to this point. It would not matter if the rate was reduced beyond Chicago, it would still be that relative relation to that future. In the case that we have here at hand it is, in my judgment afforded a means [fol. 2373] of attracting additional business through the Chicago gateway, with the resultant beneficial effect to the producer in the territory where it is produced. The protestants in this case are desirous of retaining that condition, and the condition that relates to the inbound corn and the possibilities that this proceeding involves as to getting that corn out of Chicago. To me it appears that we have under the present rate adjustments here a very satisfactory condition from the standpoint of the Chicago grain merchant whether he be a receiver or a shipper. We have varied modes of getting the grain into Chicago, the principal ones under discussion being the water transportation into Chicago, and the rail transportation into Chicago; and I believe the records disclose that the corn that moved into Chicago, the amount of corn moved into Chicago in 1939 was exceeded in volume by only two railroads. It has become, and as the record indicates, is of increasing importance all the time. We have been able to pay the producing section—when I say we, I mean the elevator interests here have been able to pay full market price for that corn, as there was no penalties inflicted on the outbound movement. We have been able to utilize the corn that came in here on these intra-lake local lines for the reason that with that feeling we had an escape across the lakes, and a small percent of it to the destinations shown in the exhibits.

[fol. 2374] Now, what will happen in the event that we are in the future denied the reshipping privilege on barge billing as we now enjoy leaves quite a few uncertainties; but it seems to me that there is a substantial investment in properties along the Illinois River; the operators will attempt to use them, regardless of the outcome of this case. And then we will be obliged to take the escape that we have formerly used for our lake billing corn, use it as an escape for our barge billing corn, in which event it will lessen the demand here for lake billing corn and penalize, in my judgment, the receiver, the producer who enjoys these lake locals in this manner; the elevators, if they participate in that business to a degree that they want to acquire corn for rail shipment out of here, will be obliged to buy that corn on the Illinois proportional basis,——

By Mr. Belnap:

Q. I don't think you have explained that in the beginning, Mr. McClintock; maybe you better stop and tell us how you buy that, as against the lake local on the Illinois proportional basis.

A. Up to the time, or during the time such as now when we have had this barge billing that is qualified to do these important things that an elevator wants to do, this lake local corn has sold at or very close to the price that the most preferred billing that exists sold for. In other words, having this escape out of here by lake, we were willing so long as there was a normal business going on out of here [fol. 2375] by lake, to pay prices that were above—that were competitive with other billing corn; what I mean, competitive based on what you could do with it. And when you were going out later that was just as good a billing for you as if you had a 12-cent Illinois proportional, or river or barge,—whatever it might be. The corn sold at a price at or near premium; but when you got up to a point of where you had to anticipate what you were going to be able to do with that billing, this corn sold at some discount.

Q. That is, the lake local corn?

A. That is the lake local corn.

Q. Explain in relation to this previous description of how you bid for corn.

Exam. Taylor: Using the 57 cents.

The Witness: Well, we will suppose we were still paying 57 cents for choice billing, the billing you could pay the most for.

By Mr. Belnap:

Q. Yes.

A. If there was a consistent movement of corn going out via lake, that corn, quality considered, would sell at the same price.

Q. Sell to you at the same price?

A. That is right. We would pay the same price for it. If we were going along near the end of open navigation and were building up, maybe accumulating stocks for win- [fol. 2376] ter distribution, we endeavor to discount that corn. We either bought it at a discount, or didn't buy it.

Q. How do you do that; how do you express your discount?

A. In the prices.

Exam. Taylor: It can best be stated in cents per hundred pounds; and the example on barge grain you buy at one-half cent under the 57 future?

The Witness: All these figures we had in here is by the bushel.

By Exam. Taylor:

Q. By the bushel?

A. Yes; if we were willing to pay 57 cents for what would be considered the most desirable billing——

By Mr. Belnap:

Q. You started at one-half cent under May?

A. 56½ cents; the spreads, you know, vary considerably on these lake locals. They vary all the way from— these lake locals and the Illinois proportional, they vary from one-half cent a hundred, I believe, up to 5 cents a hundred.

Q. All right.

A. Perhaps on the half a cent bill, we would inquire, if a receiver would come up to us and say how much will you bid for this corn on lake billing? All right; what is the lake billing, we ask him; what is the differential? All right, he will say one-half cent a hundred. Maybe it would

not be enough to quibble about. But if it got up to where it was 5 cents a hundred, or 4½, or 4 cents a hundred, then [fol. 2377] we would discount that corn in price. Now, that discount would be based on what conditions we were figuring our operations from.

Q. I want to first find out how you discount it, the fact?

A. Discount him in the price.

Q. Take that one-half cent situation; if because of conditions, whatever they might be, you were insistent on buying it on the Illinois proportional basis, and it came from a lake local point at which the lake local was one-half cent under,——

A. The discount then would be one-half cent between lake local and Illinois proportional.

Q. Would that mean you say this is lake billing, I will pay you a cent under?

A. That is correct; inasmuch as the buyer assumes the hazard that is involved in having that lake local bill on hand.

Q. That is the way you do it?

A. That is the mechanics of it.

Mr. Brown: Has he said what he conceives his best grade of billing?

Mr. Belnap: No, I don't think so; that was the general question. I asked him, and he got a little ahead of himself.

Mr. Brown: The witness has said several times he bought it on the best of even lake billing.

The Witness: I refer generally, in saying best billing,—I refer to the billing that we can do the two things that we want to do; it is qualified for delivery on a futures [fol. 2378] contract, or it is qualified for shipment out of Chicago on the going proportional rates.

By Mr. Brown:

Q. Without any additional penalties?

A. Without any additional penalties, yes; that is the answer. That is what I consider good billing.

Q. That would be even rate billing?

A. That would be even rate billing; and barge billing as it has been applied in that respect is even rate billing.

Q. So that when you buy corn from a receiver, and also when you bought other grain, do you inquire as to the billing that is going to be offered with that corn always?

A. That is correct.

Q. Then, you fix your price?

A. That is correct.

Q. And your price that you generally post has a limitation on it?

A. Oh, yes; if it is a posted bid it is specified that your bid is for even rate billing, or Illinois proportional billing, or lake billing.

By Mr. Belnap:

Q. It does specify that?

A. Yes.

Q. You said that presently you do not, or this last year you have not discounted the lake local billing, except fractionally; do you recall during the course of the year what has been the range of that discount that you reflected in [fol. 2379] the price quoted?

A. To the best of my knowledge, I do not believe that lake local corn has ever been discounted more than a half cent a bushel. Now, there may be some exception; that may not be wholly true. But during the latter part of the year 1939, I am certain that lake local corn, lake local billing corn has not been discounted more than half a cent.

Q. Now, when you go into the period of closed navigation, does that situation change any?

A. Well, it changes from the elevator man's point of view.

Q. I am talking about from your point of view, yes.

A. Yes; it changes from the standpoint that we are then accumulating billing that we know positively that we will have no escape with until the opening of navigation the succeeding spring; and therefore we are careful about acquiring billing or accumulating any substantial volume of it, at least that has any penalty attached to it for delivery or for shipment out of Chicago by rail. And carrying the thought that I was on awhile ago into the summer months that now prevail in the winter months, since we will have to use our barge billing out across the lakes, that absorbs the outlay for the lake local billing that we have formerly used it for. As I see it, if the elevators in Chicago remain in position to give the eastern railroads out of here any business by rail, and we are denied the privilege of using our ex-barge billing, we will then be forced [fol. 2380] to buy this lake local billing corn on the Illinois

proportional basis, or discount it in price to a degree that it will absorb the difference between the lake local and the Illinois proportional. Now, if I am correct, the effect will be just what the Indianapolis man and the man from Decatur said they wanted to happen; that that would divert corn back through their channels, instead of coming to Chicago, which was the condition they complained about.

Q. Why would it do that?

A. The effect of the lake local rates are that it raises the price at the point of shipment, naturally. That is—freight costs being the primary factor that makes up the difference between the Chicago price and the price at the point of production, is transportation. So if Morris ships up here on a 5 cent rate instead of a 9½ cent rate, the dealer in that community, the dealer and the community down there, either one or together, get the benefit of that difference.

Q. So long as you do not discount it at this end?

A. So long as it is not discounted, and to the extent that the discount is involved, if any. If we buy on the Illinois proportional basis, although the railroads may be hauling it in here still for 5 cents, if we buy it on the Illinois proportional basis it lowers the value of that corn at the point of shipment, where it again goes back into competition—to the competitive point where the Indianapolis dealer [fol. 2381] and the Decatur dealer and the other outside markets that were in here testifying that they were disadvantaged by this situation; that will put them back to where they pray to be. And that will have the effect of affecting me as an elevator operator, as affecting the producer, as affecting the commissionman or the receiver; and it seems to me like about everybody that is interested in this case, except our competing markets. It will help them.

Q. That, as I understand you to say, will flow from the fact that there will necessarily be a recession in the country point prices?

A. That is correct.

Q. As to corn which is offered for rail shipment?

A. That is right.

Mr. Enoch: Well, now, you mean country point prices along the river, don't you?

The Witness: I mean any place.

By Mr. Belnap:

Q. Where the lake local is——

Mr. Enoch: The balance of Illinois, that is not contiguous to this river,——

The Witness: Mr. Enoch, you show here, or there was introduced, and I believe by your witness, yes,—we have the picture right here; I don't know whether he counted the stations, but I notice that there was an official count made of the stations that enjoy the lake local rate into Chicago; and I believe the number of them was 375 sta-[fol. 2382] tions. Now, you know I am pretty sure that all that territory in a general way was a heavy producing section before these lake locals came in effect. You know too, perhaps about what the annual volume per elevator would be in those towns. You know it covers a lot of bushels, those 375 stations. Now, by virtue of having these lake local rates into effect you have benefited, unintentionally or not, the producer in that section to the extent of the difference betwen this lake local and your former Illinois proportional rate.

Mr. Enoch: Don't expect me to say yes to that; in spite of the fact that you may think I know nothing about it, I cannot agree with you. Because you are assuming that the Chicago price on which you are basing your country origin price, less the freight rate, is going to be the same in all circumstances, and not affected in any degree by those adjustments in inbound rates.

The Witness: I say generally that the Chicago market is influenced, is the influence which determines the price that the producer down in that section gets for his corn; and the relation to the Chicago market, and his price is measured in transportation costs.

Mr. Enoch: Now, I say if you assume that the fluctuations take place, going up and down at that Chicago price, are not affected at all by changes in these inbound rates,——

The Witness: I do say that absolutely.

[fol. 2383] By Mr. Belnap:

Q. Is there much attention paid to futures trading, except as to the requiring of the outbound advantage?

A. The futures trading contracts in this market have

always been very highly respected, because the participant in those contracts felt secure in that the rules provided him the necessary protection that would justify him in participating in. And this rule as relating to rates was one of the important ones. In other words, the rules fix the obligation of the seller in that contract to provide the buyer with the protection of the reshipping rate out of here.

Q. That rule relates only to the outbound rate?

A. That is true.

Q. The future trading is not affected by the inbound rates, is it?

A. No, sir; that is an obligation that is assumed by the person making delivery.

Exam. Taylor: Let us go off the record a moment.

(Discussion outside of the record.)

By Mr. Belnap:

Q. Mr. McClintock, I want to ask you questions about this grain business on the river; I am going into the steps how it is handled, who handles it; tell us about how the protestants happened to be interested in that business, what they have down there, facilities and investments.

Exam. Taylor: Chicago protestants.

By Mr. Belnap:

Q. Chicago protestants; when I use the word protestants, [fol. 2384] I am always referring to that.

Exam. Taylor: I think you should stipulate which one.

Mr. Belnap: The Chicago protestants.

The Witness: Well, speaking for the Continental, we have located on the Illinois River, we own an elevator at Naples, Illinois, Havana, LaSalle, and we operate one under lease at Peoria. Norris Grain Company own elevators; they own a greater number of elevators, and the houses they own, I believe are located—they operate one under lease at Havana, and they own a line of elevators from Pekin, Illinois, up this way, including Pekin, Chillicothe, Henry, Hennepin, and Ottawa. I believe that represents the ownership, so far as the Chicago protestants are concerned.

By Mr. Belnap:

Q. You have just recently built an elevator at LaSalle, have you not?

A. We did recently build an elevator down there; it was completed about around the first of October. That house is a 75,000 bushel capacity elevator. It was so built and consideration given in its building for fast handling. It is equipped to receive and at the same time load about 5,000 bushels per hour. This elevator at LaSalle is located on the south bank of the Illinois River, just south of the city of LaSalle. It is equipped to receive grain by truck, and to make shipments by water. It is not on a railroad. Our elevator at Havana is equipped to receive by truck and by [fol. 2385] rail, and equipped to ship by water and by rail. And we do both. The house at Naples is a small house, not located on a railroad. The house we operate under lease at Peoria is a concrete elevator of about 125,000 bushel capacity. It is equipped to receive by truck and by rail, and to ship by water and by rail; and we do both. The Norris houses, I can only give you a general description of them. The house at Pekin is larger, and it is on rail and water and is equipped to receive by both truck and rail. And it is my understanding that they engage that house in both types of business. Norris' other houses are similar in operations to the ones I have described at LaSalle.

Q. What is your investment in the elevator at LaSalle?

A. Including costs of site and preparations of the ground on the water front, and everything, in round numbers, $50,000.

Q. And some of these other elevators represent a greater and some a somewhat less investment?

A. Yes. Of course, the houses vary in cost. If you are going to build a new elevator, the size is a determining factor, and the site, and the water front. The elevator at Norris and Pekin is a considerably larger type elevator; and, of course, the cost of such a house would be much greater.

Q. Speaking generally, most of these houses have been located on the river, with a view to river movement?

A. That is true; with the possible exception of the Pekin house; I think it could fairly be stated it was originally [fol. 2386] built for the purpose of engaging in all types of business that might be coming through the Peoria market.

But the rest of them are built for the purpose of accumulating grain and distributing it through terminals.

As far as our interests are concerned, in river houses, we acquired them merely to use as an auxiliary of our terminal operations. It is a means of acquiring volume for our terminal efforts here.

Q. The Continental Grain Company also built a house at Seneca?

A. We built a house at Seneca under a contractual arrangement with the Allied Grain Dealers' Co-operative Association.

Q. Are you selling that house to the Allied Grain Dealers' Co-operative Association?

A. We are selling that house to the Allied group; yes, sir.

Q. And the basis on which you are selling it to them is what?

A. We sold them the house on a five-year payment plan. The terms of the agreement is that they are to set aside half a cent per bushel for every bushel of grain that passes through the house, to be used to liquidate the contract price of the house, which it is estimated that can be done within approximately five years.

Q. The contract price was your investment, plus the carrying charges?

A. The contract price was the actual cost of the house, supported by material costs, and other costs; and they are [fol. 2387] to pay, I believe it is 4 per cent on the annual unpaid balances. Now, there is a provision there that in case the Allied do not fulfill their obligations under the contract, then the money paid during the period shall be applied as rent.

By Exam. Taylor:

Q. Well, this one-half cent per bushel, is that not taken care of in the price that the Allied Co-operative people pay the farmer for the grain?

A. Well, it is taken out of their profits, I presume. The money that they—I don't know what they are operating on, but say they were operating on a cent and a half marginal profit down there, then, they are presumed to set aside a half cent of that for the purpose of applying on the obligation in this contract. In other words, if they handled 500,000 bushels of grain down there they will at the end of the

year owe on this contract a half cent on the 500,000 bushels, so far as that particular year is concerned.

By Mr. Belnap:

Q. As to that matter, is the situation any different than your house in LaSalle; when you buy grain at LaSalle you have a margin in there which in part covers the cost of your owning that house?

A. Well, it is our intention to maintain an operating margin down there that will pay the overhead and depreciation on the house.

Q. Do you seek some return on your investment as well?

A. Most assuredly.

[fol. 2388] Q. Instead of paying rent, you are seeking a return on your investment?

A. That is true.

Q. Now, to go on with that contract, the Allied Co-operative Grain Dealers obligate themselves to sell the grain they ship from that house to Continental Grain Company?

A. Yes; during this five-year period, there is a provision in the contract that during this period the Allied is to sell the grain to the Continental Grain Company.

Q. Is the price at which they are to sell fixed in the contract?

A. Well, that price is measured by their operation at Morris. As a matter of fact, the way it works out in practice, when I bid Allied for grain I bid on a basis delivered Chicago, and I make no distinction as to whether that bid applies on Seneca grain or out of Morris; the bid is all the same.

By Exam. Taylor:

Q. Is there any penalty if the Allied Co-operative people would sell their grain to somebody else?

A. No penalty prescribed.

Q. They are supposed to sell all of it to you?

A. That is true, during the five-year period.

By Mr. Belnap:

Q. That is on your bid, whatever it may be, that you post for river grain?

A. That is true.

By Exam. Taylor:

Q. Wouldn't it be a violation of their contract if they did sell it to somebody else?

[fol. 2389] A. Yes, I guess it would; violation of the spirit of the contract, at least.

By Mr. Belnap:

Q. Now, are there also elevators with river facilities at St. Louis?

A. Well, there are elevators located on the Mississippi river at St. Louis. The Continental Grain Company operate the Missouri Pacific elevator in St. Louis, and it is on the water and has means provided for loading to the water and unloading from the water. The other elevator that is located on the river there is the Burlington elevator, operated by the Norris Grain Company. It is equipped to load out by water, but I do not believe it is equipped to receive by water. That is my understanding.

Q. What is the situation in Kansas City?

A. To the best of my knowledge, there is only one elevator on the river at Kansas City. That was an elevator built during the last two years, I believe. It was built by the city of Kansas City, as I understand; and it is under lease to Hart, Bartlett, Sturder Company, who operate it.

Q. That company is equipped to ship by barge?

A. They are equipped to ship by barge, and do ship by barge.

Q. On the Illinois River, are there some other elevators than the Chicago protestants?

A. Yes; there is elevators located at Pekin, operated by W. W. Dewey & Sons. I believe the elevator is owned by [fol. 2390] Dewey. One at Lacon, Illinois, operated by the Terminal Grain Company; and their headquarters is at St. Louis. There is one located at Seneca, the one which we just mentioned. And one elevator in Morris operated by the Allied Group, and one operated by Mr. Finnegan. I believe Mr. Finnegan designates his house as Patonville, but they are in the Morris area.

Q. Also an elevator at Montezuma, on the river?

A. Yes, I believe there is a small elevator down there; I am not acquainted with the type of elevator, or its importance.

Mr. Enoch: Now, is there an elevator at Montezuma that is engaged in this business; that is what we want to know.

By Mr. Belnap:

Q. Engaged in shipping by river?

A. Yes.

Q. You have seen Mr. Schimmel's exhibit 67, have you not, which shows river rates are somewhat below the rail rates from these Illinois river landings to Chicago?

A. I have seen the exhibit, and I am familiar with the rates.

Q. Now, will you take up and describe for us the methods, the customs followed by the Continental Grain Company in buying of the grain which moves on the river to Chicago?

A. You mean from our own houses?

Q. Both your own houses and anybody else's you buy from; just give a complete story on it.

A. Well, at our own house,—we will take LaSalle as an example: we maintain a personnel at the river to perform [fol. 2391] the clerical duties and to make proper contacts with the country elevator, as well as the man to operate the physical part of the house. We give our man down there who contacts the country elevators in the territory surrounding LaSalle a bid on corn, a price that we are willing to pay for corn delivered at that elevator. That price is based on what we are willing to pay for corn at Chicago, less transportation costs, less trimming at Chicago, and less the margin that we endeavor to maintain at LaSalle to cover our operating overhead there, depreciation, and a reasonable return on our investment.

By Exam. Taylor:

Q. That includes your commission?

A. We have no commission down there, Mr. Examiner. The Commission rules that we refer to here, as applies to the handling of cash grain in Chicago, are involved only in instances where the transaction is made on basis of Chicago weights and grades, or either one.

By Mr. Belnap:

Q. What species of grain do you buy down there?

A. Well, it so happens that the principal species of grain in the LaSalle area is corn. We have handled a substantial

volume of beans down there, considering the fact that we only operated the house about three months. We are willing and ready to buy any kind of grain that is offered. That is what we built the house for, to buy the grain that is produced in the LaSalle territory. And, as stated, LaSalle happened to be in that territory where its main production [fol. 2392] is corn. And that applies quite generally in the Illinois Valley.

Q. Have you had transported for Continental on the river any grain other than corn and beans?

A. In 1939?

Q. Or any recent period?

A. We have had wheat transported on the river, and oats too. As a matter of fact, we handled a little dab of oats this year; it was very insignificant.

Q. That is a matter that depends on crop conditions?

A. Yes, crop conditions, and depending on whether the oats are selling on a Chicago basis or not.

By Exam. Taylor:

Q. Well, Mr. McClintock, in buying at this LaSalle house that you are talking about now you deal with other elevators in the neighborhood, rather than direct with the farmers?

A. That is right: we deal with the established grainmen in that area. Now, the area is not definitely defined by any boundaries. In our experience, a very large percent of the corn, or whatever kind of grain it might be, comes from within a radius of 30 miles. That is not the extreme. We have had it to come much farther than that.

Q. Did you ever have it come direct from the farm?

A. You mean, do we ever buy direct from the farm?

Q. Yes.

A. I will have to answer yes to that, with a little explana- [fol. 2393] tion. There was a gentleman that came in there, and he was really in the trucking business; but he happened to be a farmer too. And our buyer down there had the impression that he was a dealer. That was when we first opened the house. We did buy some corn from him, but only on that one occasion. As a matter of fact, we had a meeting with all of the elevator people in the territory within 30 miles, or within a greater distance of LaSalle; they were invited in and we discussed the matter in which we intended to do business, and explained to them that it was our intention to originate the business through them.

They in no sense represented an agent of ours. We merely made them the bid; and like any grain dealer, he will lay down all the bids that he gets from various markets, and he will measure those bids in terms of transportation costs and he will accept the one that is most profitable to him. Maybe they are equal; then he decides whom he likes best, maybe, and gives them the business. But that is the basic principle on which this business is done. And it should be remembered that these people do not act as an agent for us. We do not have any dealers, but we are there to buy all the grain that is produced in that territory. If the economics in handling grain business makes it practical for that elevator to give us the grain business through him, he delivers it there; and if he doesn't then he does not.

By Mr. Belnap:

Q. It all depends on the price you can bid?

[fol. 2394] A. Absolutely.

Q. With how many country elevators do you do business in the LaSalle territory?

A. I just counted them once; I get a report from our accounting department showing the people that have open contracts with us down there, and I counted them up one night; I think it was around 37; 37 country elevators. I think that was probably the extreme. Around that number.

Q. The country elevator man guarantees the title to grain he delivers to you, does he not?

A. That is true. We think this about the country elevator man: as I said, we recognize the fact that we haven't got the facility down there that can take the place of the service of the country elevator man, that the country elevator man is performing to his people in the community. We recognize that nature has to be accounted with. Such is the case right now. We think that the country elevator man performs a useful service in the community that he lives in; and we think too that that country elevator man can perform a service for us that we cannot buy. And maybe we are selfish in keeping him in there; I don't know. But we think he has a definite place in the picture, and we are leaning backward to see that he stays there.

Q. How are the transactions handled when you buy grain other than that purchased by you from the country elevator man?

A. We make them a price basis delivered Chicago. In [fol. 2395] water terms that is c. i. f.; that is, all charges being paid up to the elevator side, which includes in the case of Chicago a trimming charge. That is absorbed by the seller of the grain.

Q. Now, do you give that bid to receivers for the Chicago Board of Trade?

A. We do.

By Exam. Taylor:

Q. Well, isn't it true that title to the grain at LaSalle, for example, passes from the country elevator to your company?

A. You say at LaSalle—that is true. We settle for that on the basis of LaSalle weights, and so forth. But he said for others.

Mr. Belnap: You are talking about the LaSalle grain again?

Exam. Taylor: Yes.

By Mr. Belnap:

Q. Now take up the situation I have asked about, the other situation where you buy grain from somebody who has an elevator on the river, other than the Continental.

A. Well, we make them a price delivered Chicago by water; and as I said, the terms by water are c. i. f. Chicago, which means that the seller pays the insurance and freight and cost of delivering that grain to the Chicago market. The buyer is also required to charge a trimming cost that occurs at Chicago in connection with the unloading of that grain.

Mr. Enoch: May I ask right there, is Allied typical of [fol. 2396] that situation?

A. Yes, they are.

By Mr. Belnap:

Q. In buying that grain,—let us use Allied as typical; do you buy some direct from Allied?

A. We buy some direct from Allied.

Q. Is that on the basis of Chicago weights and grades?

A. It is.

Q. And in that case, to take our example, when you add the price of 56½ cents that you are willing to pay for corn delivered Chicago, what would that price be that you quote to the elevator?

A. 56 cents.

Q. That half cent difference is because of what?

A. Because of the commission rule here, to arrive rule.

Q. Lowell-Hoit & Company also, or some other commission house, also has a bid on that corn?

A. We have bought a lot of corn from Lowell-Hoit; we have had corn coming from other commission houses. We have bought corn at Daniel F. Price Grain Company here, which runs a commission house; we have bought river grain from Bennett. We do not try to restrict our buying sources; we try to broaden them.

Q. And using this same price situation you had before, what would your bid be to Bennett, for instance?

A. It would be what we term a gross price, or 56½ cents.

[fol. 2397] Q. When a receiver at Chicago accepts your bid for grain, whether it be rail grain or river grain, do you know where the grain comes from, necessarily, when you buy it?

A. No, I do not.

Q. You are satisfied if it is grain that meets your price?

A. As a matter of fact, we don't know where it is coming from, as some general thing; I don't mean to say that I never ask him if I am interested in some particular billing; I might ask him. But generally the bid is 56½ delivered Chicago. And under those terms he can deliver me grain from any place, unless there is a special stipulation or restriction put in, which is not customary.

Q. It is in connection with the lake local, is it not?

A. Yes, it is based on a lake local; he has a lake local bid.

By Exam. Taylor:

Q. You do require to know whether that grain will be susceptible of transporting to Chicago, and from Chicago to New York on a proportional rate?

A. And we arrive at that information by specifying a lake local or Illinois proportional.

Q. But whether it comes from John Jones or some other firm, you don't know?

A. No; nor any particular station in Illinois or Iowa.

By Mr. Belnap:

Q. What barge lines have you used, Mr. McClintock, in bringing your own grain to Chicago, and what barge lines have been used——

[fol. 2398] A. Well, we have used—you mean since my connection with Continental Grain Company?

Q. Yes.

A. We have used John I. Hay Company; we have used A. L. Mechling Barge Lines; we have used Barry Barge Line.

By Exam. Taylor:

Q. When you used the Mechling Barge Lines, that is also tied up with the Allied Barge Corporation, isn't it?

A. Well, Mr. Examiner, if we buy the grain, as I stated, delivered Chicago, then it is up to the seller to provide the means of getting it here. He makes his own selection.

By Mr. Belnap:

Q. You are talking about the barge lines you have used as Continental, as shippers?

A. From our own stations. There have been small amounts of grain that came in here from other barge lines, now. We have bought grain from Dewey at Pekin, and we have bought grain from Bennett that came from Dewey originally; and I believe that it was Lawrence Transportation Company that brought that grain in. Not so long ago we bought a barge of corn out of St. Louis, and it came up here, it was transported by a line that we had never used before, so far as our Chicago office was concerned,—Waterways Transportation Company.

Mr. Day: What was that, corn or wheat?

The Witness: That was white corn.

Mr. Enoch: Was that in 1939?

[fol. 2399] The Witness: Yes, sir; late in 1939—you made your question to apply what barge we used into Chicago?

By Mr. Belnap:

Q. Yes.

A. I think that about covers it.

Q. I understand when you are buying barge grain your bid for it under the present situation is just as good as any bid you put out for the same kind of grain?

A. We consider the value of the barge billing under present applications of the billing out of Chicago as good as any billing we get. We pay a price accordingly; that is, it represents the best price that can be obtained in Chicago.

By Exam. Taylor:

Q. Sometimes known as premium billing?

A. I wouldn't say it was a premium; there are some; there may be in isolated cases a special billing or premium billing. But I would not say this was a premium billing.

By Mr. Belnap:

Q. A rail billing carrying a transit balance would be better than your barge billing, would it not?

A. Yes; for example, there is billing comes in here from Iowa that shrinks considerably into the Mississippi River, Mississippi Valley, even up to Cairo, I believe. If there was business working in that direction, that kind of corn, originating on that kind of billing, limited in quantity as it is, would probably bring a premium; and such billing does frequently sell at a premium.

Q. Is there some billing out of Illinois that carries tran- [fol. 2400] sit balances lower than the reshipping or proportional rates; that is, out of Illinois?

A. Will you restate your question again?

Mr. Belnap: Read it, Mr. Reporter.

(Question read.)

By Mr. Belnap:

Q. I am thinking particularly of Central Freight Association destinations there, Mr. McClintock.

A. Yes, that is true; but at the same time, I don't know whether that could necessarily be called specially satisfactory billing. Although it might take a shorter transit balance than some other billing that we have. I would not exactly consider that from a standpoint of a general operation as a previous billing.

Q. During the season of open navigation are you much concerned with the matter of the inbound billing when buying grain? If so, to what extent?

A. We have not been up to date; for the fact that that would add an outlet for the varied types of billing that we

now get, coming into Chicago. That is, we have Illinois proportional origin billing that comes in here where there is quite a spread between the local rate paid in and the Illinois proportional going out. That territory is confined to a relatively small territory, compared with our total territory. In acquiring that billing we know that we have to go out in a certain manner to recover that tieup, as we call it, between the amount paid in and the Illinois proportional rate. [fol. 2401] We have even rate billing and trans-Mississippi billing which is up in this classification of the more desired class. It involves no penalties anywhere. We can go out lake-rail. And then we have the lake local billing, of course, and the lake billing, and the river billing. Now, our possibilities under the present rate structure out of here have been such that we could acquire that billing and go along with it for quite—with quite some degree of certainty. That is true especially during the open season of navigation here, because our lake shipments during that particular period are much greater than our rail shipments; and we were able to provide an outlet across the lakes and still buy this lake local billing. But as I stated awhile ago, when it gets up toward the close of navigation we begin to be a little cautious about taking on lake local billing. We don't know what is going to happen. We are going to accumulate a stock of corn here that we can only merchandise in one manner, and that is out of Chicago by rail, for the next four or five months; so we are a little bit cautious about the kind of billing we fill our elevator with. We are not certain about conditions next spring, and in the meantime we may want to deliver that corn on future contracts, which we cannot do only with certain defined billing as prescribed under the rules of the Board of Trade.

Q. Or sell at a penalty?

[fol. 2402] A. Or sell at a penalty which can hardly be absorbed in the grain business.

By Exam. Taylor:

Q. In other words, you cannot pass it back to the man from whom you purchased again?

A. We cannot.

Q. As far as our exhibits of record are concerned, one for your company covering a period from May 1, 1939, to January 14th, 1940—there is a similar exhibit for Norris;

and then Mr. Tannehill read into the record some statistics covering a certain period; is it possible to take a specific period of that character and say that is representative of what will be experienced over another calendar year or period of years?

A. Well, it would not be representative. The exhibit that Mr. Tannehill used would not be representative at all; because it referred only to the period of open navigation, or approximately so. And during that time, as I have stated before, the larger percentage of our business is by water. Naturally, after the close of navigation all of our business is by rail. You might just as well try to strike the average snowfall of Chicago for a year's period by taking June, July, and August; that would be fairly representative of the situation. For example, we of course have shipped no grain out of Chicago by water since navigation closed, but we have shipped a substantial amount of grain out of here by rail since navigation closed.

[fol. 2403] Q. Where are you shipping that corn?

A. Well, since this interest started, and that was after the close of navigation, we have shipped or are in the process of shipping a million bushels of corn out of here—I am speaking about Continental Grain Company——

Q. Yes.

A. Out of Chicago to Eastern Seaboard for export.

Q. Where is that corn going?

A. Well, it is going for export to the United Kingdom; others going to Scandinavian countries. It is going wherever corn is needed.

Q. On what basis did you sell that corn?

A. The corn was sold on a c. i. f. basis abroad. And we of course use the cheapest transportation available to us to get the corn to tidewater; and then of course engage the ocean vessels beyond tidewater to the Atlantic seaport; which in this case going to Baltimore we have this 16 cents per hundred; and most of the corn up to date has gone to Baltimore. It so happens that we are applying barge billing on these shipments. I d- not think we could have made the sale if we had not been permitted to use the shipments. In other words, if we had not had the reshipping privilege here on barge grain, so far as we are concerned, we could not have engaged in that transaction.

Q. Why is that?

A. Well, the corn that we had in the house was originated [fol. 2404] either on this lake billing corn or the barge; some minor exceptions to that. By and large, that was our situation.

By Mr. Brown:

Q. Are you talking about lake local?

A. I am speaking about this lake local intrastate billing that comes in here at a less rate than the Illinois proportional. Our stocks were covered by that kind of billing. In accumulating that billing, we of course, were concerned about the outcome of this case, not knowing as far as the barge billing was concerned, not knowing when it might be decided and how it might be decided; but we recognized that the worst that could happen to us would be that we would have to carry that corn until navigation opened next spring and then move it out across the lakes.

By Mr. Belnap:

Q. Instead of giving it to the railroads?

A. Yes, instead of giving it to the railroads. There is a market effect there that I think is quite important; supposing this case had been decided before we got started shipping this corn, against us; then we would have been forced to carry that corn until the opening of navigation. Our position was that we were getting well crowded with grain before we started shipping this corn. We were practically out of the market, so far as buying any more corn. Being able to dispose of this corn at this time and ship it during this period will, of course, enable us to get back in the market and add whatever influence our buying power is to the Chicago market.

[fol. 2405] I would say that was quite generally true with other houses here who engage quite extensively in the handling of river corn. The possibilities there are that situation could probably be duplicate- two or three or four times during the period from the close of navigation to the opening of navigation so long as we are permitted, able to use the billing out in the manner just described. That is my observation, that that is quite important to the Chicago market; because there is a greater escape; and the more grain you can get out of the market, and the more it lends

toward bringing grain into the market. That is very natural. That is just a business situation——

Mr. Enoch: May I ask, now, you are saying there that you could not have made this contract unless you had barge corn, and that it would have gone to some outside—to somebody outside of this country,—Argentine?

The Witness: Well, there is an international situation involved there, Mr. Enoch; and we do have competitors in foreign markets.

By Mr. Enoch:

Q. I bring that up when you say somebody else would have gotten it; I assume you do say somebody else would have gotten it; are you referring to somebody else in this country?

A. I don't think I said somebody else would have gotten it; I said we could not have engaged in it.

[fol. 2406] Q. Well, the people that bought it,—if they had not got it from you they would have got it from somebody else; now, can't you tell me whether it would have been from somebody in the United States, or elsewhere, in the Argentine; and if in the United States, whereabouts would they get it?

A. I stated here that the elevators that I represent, based on last year's operation, handled 80 some per cent of the business out of this market. It is my observation that business, and the territory from which all of the elevators in this market have to originate their grain, is in the same territory that I have to originate the grain that I accumulate. So it is reasonable to assume that all the elevators here were in quite a similar circumstance as that I find myself in; and that consequently the kind of corn, the amount of corn that was sold out of here for export would have been very much less than what was sold out of here.

By Mr. Belnap:

Q. It would have been if you could not have shipped at the barge rate?

A. Yes, that is the point that I intended to make; if the billing situation was different than what we now have it.

By Mr. Enoch:

Q. Will you tell me this, and I don't mean to press this any further: did you mean that some man in Galveston would have got it, in New York, at San Francisco,—or that the corn would have come from a foreign country if somebody else filled the contract?

[fols. 2407-2409] A. I think it is most likely that you will find in this case it would have gone to a foreign competitor.

Exam. Taylor: We will adjourn until tomorrow morning. We will start at 9:00 o'clock, promptly; and the reason you are here so late is because we had so many interruptions and did not get started until 9:30. We will start tomorrow morning at 9:00 o'clock.

(At 5:40 o'clock p. m., an adjournment was taken until 9:00 o'clock the next morning, Friday, January 26, 1940.)

[fol. 2410]

Morrison Hotel,
Chicago, Illinois,
Friday, January 26, 1940.

Met pursuant to adjournment at 9:00 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances: As heretofore noted.

Proceedings

Exam. Taylor: All right; come to order, gentlemen.

Mr. Brown: Before Mr. McClintock takes the stand, I would like to have the record show that the statement I made day before yesterday——

Exam. Taylor: On the witness stand?

Mr. Brown: On the witness stand, was to clear up the application as understood by all interested parties from the time this barge grain commenced to move and up until the present time; and that I appeared as amicus curiae.

Exam. Taylor: Proceed, Mr. Belnap.

J. O. McClintock, resumed:

Direct examination (continued).

By Mr. Belnap:

Q. Mr. McClintock, you have already detailed, dealt with the role which the country elevator reasonably close to the

river plays in the marketing of this river grain; what have [fol. 2411] you to say as to the effect on the country elevator who is removed from that territory?

A. You mean what is the effect on the elevator who is not geographically located to participate in the river movement?

Q. Yes.

A. Well, it is my judgment, and relying too on the testimony given here by competing markets, where it was stated that the activity along the river denied these markets like Decatur and Indianapolis the opportunity to compete in that territory competitively with the river, that those naturally would confine their buying activity in that territory removed from the river, in which event their buying would be more effective, being restricted as it was, or as they indicated, to a smaller area. In other words, they would have to be more vigorous in their buying activity in the area left; and therefore based on that theory, which I think is substantiated by the facts, that the shipper removed from the river benefits to the extent that he has less competition from the territory that is affected by the river; and in the proportion his position is improved to that extent.

Q. That would affect both country elevators and purchasers in that territory?

A. Well, their position in that respect is similar. If it affects the elevator, it naturally affects the producer, because it is through the elevator that the producer market [fol. 2412] is determined.

Q. And the premise for all of that is that the lower cost of transportation by the river placed the Chicago market and those purchasing to store grain in Chicago in a better competitive position in this interior territory in relation to other markets or consuming points, such as Decatur?

A. That is true; the particular territory affected by the barge operations, and the locations where we have this lake local billing; both of those conditions being, as they are, based on cheap local rates to Chicago, naturally tends to direct that grain, lead that grain through the Chicago channel.

Q. Earlier in your testimony you stated that the Chicago protestants were the shippers of 83 per cent of the grain which moved as grain out of Chicago?

A. That is correct.

Q. Does that mean that that same group, in approximately the same proportion, constitute those who buy cash grain, whether it is ex-lake, ex-river, or ex-rail, in the Chicago market with a view to merchandising it as grain?

A. Well, that group does participate in buying grain from whatever source it may originate, or whatever mode of transportation may have been employed to get the grain into Chicago. They are the active merchandisers and buyers, and sellers of grain, as this high percentage would indicate they are.

Q. To be specific, let me ask this: take the 17 per cent [fol. 2413] which was shipped out of Chicago by others than the Chicago protestants; would that 17 per cent include grain which Staley purchased at Chicago, cash grain?

Mr. Enoch: I want to object to that, until we find out what kind of grain we are talking about.

Mr. Belnap: Whether it is corn, wheat, barley, oats, or rye; he gave the figures, 83 per cent in totals, did you not?

The Witness: That is right.

By Mr. Belnap:

Q. Did this remaining 17 per cent which the Chicago protestants did not ship, would that 17 per cent include corn, if you please, purchased by Staley at Chicago and shipped to Decatur; or corn purchased by the Indianapolis merchandiser at Chicago and shipped to Indianapolis, or to Louisville, or wherever he might ship it?

A. Well, I do not think we could confine any particular buying to any particular grain firm. I could not say.

Q. You didn't get my question; all I am interested in is as to what is included within this 17 per cent; you said that the Chicago protestants shipped out of Chicago 83 per cent of the grain which was shipped as grain?

A. That is right.

Q. Now, we have remaining 17 per cent which somebody else shipped out of Chicago?

Mr. Brown: It could not be in his 83 per cent, possibly. [fol. 2414] Mr. Belnap: No, Chicago protestants do not ship that. Now, I am simply inquiring of him as to whether included in that 17 per cent would be the grain which Staley buys out of Chicago?

The Witness: It could be, but not necessarily.

By Mr. Belnap:

Q. Well, now, explain that?

A. Because Staley's business, for example, that he bought out of Chicago might have been included in this 83 per cent of the protestants.

Q. That is, anything that Staley bought from a Chicago elevator would be included within the 83 per cent?

A. Not necessarily; it could have been in either group. He might have made his purchases from some dealer in Chicago that is not represented in the protestants here.

Q. Somebody with a private elevator?

A. Some one with a private elevator; I couldn't say definitely that Staley bought his grain—whether his purchases might have been represented in the 83 per cent or the 17 per cent.

Q. I am simply trying to find out what is included within this 83 per cent and the 17 per cent. Then, let me put it this way: as to grain which Staley purchased from any one of the Chicago protestants, that would be in the 83 per cent?

A. That is correct.

Q. As to grain which Staley purchased from somebody [fol. 2415] who had a private elevator, had the grain in store at Chicago, that would be within the 17 per cent?

A. That is correct.

Q. Do people like Staley also purchase grain from the receiver which is track grain in Chicago?

A. Well, I think they do. I think there is some track stuff sold and reconsigned out of here, but not in any important volume.

Q. Well, if I stop you right there for a moment: does that mean that the grain which comes in to Chicago will either go into your public elevators or into your private elevators, insofar as the great preponderance of the movement is concerned?

A. And then ordered out of those plants when sales are effected.

Q. That is to say, that is the way the business is done, taking it generally, all except a minor fraction?

A. That is right.

Q. So that it comes back to this: that the Chicago protestants, then, will also not only represent about 83 per cent of the shipments out, as far as grain which is sold and

going to elevators, subsequently reshipped as grain,—they buy 83 per cent of that grain?

A. Well, naturally, that is what it works out; we have to buy it before we can sell it.

Q. Now, Mr. Cole has emphasized, both on and off the [fol. 2416] record, the fact that there are relatively few consignors of the grain which moves by barge on the Illinois river; will you please deal with that subject, as to why it is, and what you think the trend of the trade is in respect of that matter?

A. Well, it is true that the business done on the river is done by comparatively few people, when we think about the number of people that are engaged in the shipping of grain from country points. It should be borne in mind, however, that at each of these locations; as for example, LaSalle, that I mentioned, there was some 37 or like amount of elevators participating in that operation as well. Now, just the reason why the river locations are in the hands of a few people, it is a little hard to say. I look at it from this point: it is a comparatively new business; it is a business that has been developed mostly within the past five or six years. It is a new venture. It requires investments. Perhaps the terminal elevator man, who in this instance and among the protestants they do own most of these facilities,—I would say that maybe they were just a little bit better qualified to see the picture, and the possibilities in the situation, having in mind the broader aspects that are involved in the general merchandising of grain; and that he was the leader in this respect, as to locating these houses, quite the same as we know has happened in new ventures in new territories when they were opened up. You can take the Northwest for example: there was a time [fol. 2417] in early days up there when practically all of the country business up there was in the hands of the so-called line houses. They were houses that were owned, maybe one concern located in Minneapolis would own 100, 150 elevators; and I think they do yet in a good many cases. They owned those country elevators out there. It was a job that it took capital and a little bit of foresight, and a little bit of risk, to get the operation going. Now, that trend followed through; it develops where that business was pioneered by terminal elevator men; and then

we have gradually seen that business turn where the independent man got into the business; and finally at practically all those locations you have farmers' elevators. That trend, new as it is down here, being only about five or six years old—you see the trend that is taking place. The first new elevator that was built on the Illinois river is now in the hands of a farm group of elevators; the Allied group, I referred to. That is the first elevator that was built, new elevator.

Q. That is the Seneca?

A. No, that is not the Morris house. We find that now being operated by a group of country elevators in that territory; and it is my thought that as time goes on they will repeat the history they have seen from the beginning: finally the shipping business down the Illinois River will get into the hands of the man who is accustomed to transacting the country business.

Q. In handling the river business in barge load lots, Mr. [fol. 2418] McClintock, is it going to work out so we have an elevator every two or three miles, like you do out through the interior so far as the rail elevators are concerned?

A. No, I don't think so. The modern means of transportation has widened the local territory, that we used to consider local, a radius of 5 to 7 or 8 miles around a town, around a location; that was local territory. But now local territory could be considered 30, 40, 50 miles.

Q. That is from a river man's standpoint?

A. That is from a river house standpoint. That is in connection with the change of transportation. And I don't think we will ever see—we might see two houses in one location, if it happened to be a favorable location from the standpoint of production and hard roads leading into that market. But I don't think you will ever see elevators spotted nearby, three or four or five miles, like we see in the country. It is a different sort of operation. It is more in the aspect of a sort of subterminal. As I say, we built our houses for the purpose of using them as auxiliary to our terminal operation.

Q. That is, the river house is an operation somewhere between the country elevator, the small house serving a small adjacent farm territory, and the big terminal elevator in Chicago?

A. That is right.

Q. Even in connection with your own house that you built at LaSalle, have you done anything about getting the co-[fol. 2419] operatives to take that house over and operate it?

Mr. Cole: I object to that. You admit this is what you are trying to do in the future.

Mr. Belnap: I am trying to show a trend. You placed a good deal of reliance yourselves in a few houses.

Mr. Cole: The very reason I entered an objection, this statement of the prospective plans still in the process of formation has nothing to do with it. I am trying to show what the facts are now.

Mr. Belnap: I am trying to talk about the past; but Continental has its own money in the LaSalle House instead of——

Exam. Taylor: Objection sustained; we want past.

Mr. Belnap: This is as to past.

Exam. Taylor: Are you talking about the past? I thought you were talking about the future.

Mr. Belnap: Maybe my question was not clear; I thought I had just stated what I am trying to get Mr. McClintock to develop is his connection at the time that was developed.

Exam. Taylor: That is all right.

The Witness: Mr. Belnap, I won't say we made any strenuous effort to place the operation at LaSalle in the hands of a group such as Allied; but there was; and I did personally meet with the committee appointed by the elevators in the LaSalle District for the purpose of discussing the possibilities of the local group of elevators, such as is [fol. 2420] represented by the Allied organization buying the house from us on a plan similar to the one that was worked out with the Allied at Seneca. There was some interest, and we were willing to proceed if there was the interest there that indicated that they could make the proposition work.

Now, we made them a definite offer what we would do. We would build a house and sell it back to them on a five or ten-year basis, on a plan quite similar to the one. There was some interest in it, and they went out; there just wasn't anything done about it at that time. There is still some interest in it; but what became of it, I am not in a position to say.

By Mr. Belnap:

Q. I don't want you to go into the future: when you get grain into your house at Chicago, say corn, does it all come into a common, intrinsic value at any given date, regardless of whether it came in via rail, via barge or via lake?

A. That is true; corn has a common value in Chicago after it gets into this market.

Q. And the matter of billing, then, has its effect only on whether you can merchandise it beyond Chicago profitably?

A. The matter of billing is the decisive—it is the factor that determines what we can do with this corn after we get it into Chicago.

Exam. Taylor: Hasn't he gone into that once or twice before?

[fol. 2421] Mr. Belnap: Perhaps so, sir.

Exam. Taylor: That is the outbound billing, and the need for certain kinds of billing; I think that has been gone over.

Mr. Belnap: If you think it is sufficiently covered, we will drop it. You referred yesterday afternoon to the fact that certain statistics relating to disposition of billing for a part of the year were not representative; I think you also said that no one year, even if complete, would be representative of any other year.

The Witness: Well, that is the way the grain business works. There is no pattern you can cut for the grain business and say you used it last year and it works this year; it does not work that way.

By Mr. Belnap:

Q. You had prepared, Mr. McClintock, from statistics compiled by the Chicago Board of Trade, an exhibit which summarizes those statistics, as to receipts and shipments for the period 1934 to 1939, inclusive.

Exam. Taylor: Are they calendar years?

The Witness: Calendar years.

By Mr. Belnap:

Q. Calendar years 1934 to 1939, inclusive; in which you show simply on each page the statistics in bushels for each different species of grain, and in which at the bottom of the page you indicate what variations there have been from

one year to the other in the ratio of water shipments to water [fol. 2422] receipts?

A. That is right.

Mr. Belnap: That is No. 82?

Exam. Taylor: No. 82.

(Protestants' exhibit 82, witness McClintock, marked for identification.)

By Mr. Belnap:

Q. Have you any additional comment to make on exhibit 82, Mr. McClintock?

A. Well, other than the purpose of this, as stated, is to show that the mode of shipments for one year compared with another do not necessarily move in proportion to the receipts. There are many conditions that might influence this situation. For example, if Ohio or Indiana would have a short crop, and the trade in that territory would be obliged to go farther west for their supplies through the Chicago gateway; in other words, the Central Freight Association territory found it necessary to buy most of their supplies in a terminal market such as Chicago, then the rail shipments would show a greater increase although the total receipts in Chicago might not have been materially different from what they were the preceding year. On the other hand, we have had export business that is a deciding factor in how much corn or grain might be moved out on the opening of navigation. If that export business should have appeared during the open navigation, then the receipts coming in to Chicago, moving out, would have been much larger in pro- [fol. 2423] portion than the lake, because they had that market during the summer months. On the other hand, if it is as we have it now, the export business is appearing at the close of navigation, then your rail shipments will show a greater preponderance, comparative movement, than it would have if that export business had not been in the picture.

Exam. Taylor: Pardon the interruption, but via western—via W. S. Lines means by Western and Southern lines?

The Witness: That is right.

By Exam. Taylor:

Q. And E. and S. E. is Southern and Southeastern lines?
A. That is right; that is the way they are correct.

By Mr. Belnap:

Q. That W. and S. is the same as Mr. Benson's shown by individual carriers?
A. That is right.
Q. And East and Southeast, his exhibits which are grouped in one figure?
A. True; it is noticeable on here as you go along and see that percentages of river grain have increased quite consistently and more pronounced during the last two years. In other words, the increase in barge receipts has not entirely been in proportion to the total receipts. They have, I believe in all cases, shown a much greater increase compared to the total receipts of the market.
Q. Has the barge business increased the total volume of [fol. 2424] grain handled in Chicago, in your judgment?
A. I would say it has, quite materially. The present position is indicative of the fact that that will probably increase more from now on, or would have increased more if the present rate structure remains in effect. And I state that on the basis that two elevators, one at LaSalle, and one at Seneca, participated in the 1939 business only during the last three months. Had they been in operation a year, no doubt the barge receipts would have been materially more than what they were.

By Exam. Taylor:

Q. Well, Mr. McClintock, isn't it true that this exhibit of yours, No. 82, really corroborates previous exhibits along the same line, already introduced?
A. Yes.
Q. And is it important in any way, other than showing the percentage?
A. That is about all, and to show the annual relation of shipments to receipts.

By Mr. Belnap:

Q. Has that increased volume at Chicago been in the interest of the market generally, and the public, in your judgment?

A. I think the market, decidedly so; because the fundamental of any marketing place is volume. It is the principle on which they thrive or decline; that is based on volume. And the Chicago Board of Trade, we have a depart-
[fol. 2425] ment of our organization here that the revenue comes entirely from—is based on receipts and shipments; that is, their revenue derived is based on volume. Now, these departments have to be maintained; and of course, if they are not self-supporting then they have to be made up in some other manner, which affects the volume of the Board of Trade.

By Exam. Taylor:

Q. Well, the Board of Trade is not an organization for profit, is it?

A. But they try to keep from losing money; we have such as our Weighing and Inspection department——

Q. All I wanted to get on record is, they are not organized for the purpose of deriving profit?

A. No, they are not.

By Mr. Belnap;

Q. Have the individual merchandisers of cash grain in the market been substantially benefited by increase in their volume and opportunity to increase their profits because of that reason?

A. Well, there is no question in my mind but what the barge business has brought more business to the Chicago market, has brought more business to the Chicago protestants in this case. It has enabled us to maintain the movement of a larger volume through the Chicago market, from which we had the opportunity to benefit as to our individual selves; and as I stated, a movement through a marketing place is good for that location as a market.

[fol. 2426] Q. I am just speaking about the individuals now; and I think you have already stated it is just now letting you participate in an export movement in which you could not participate——

A. Well, I referred to that yesterday, bore on it quite extensively; and that is a condition. It gets back to this: based on our present rate structure, we would have the opportunity to stay in business here the year around. Based on conditions that would exist in case this case is lost by

the protestants, the most that we could do after—say we emptied our elevator just preceding the close of navigation, the best then we could do would be to fill up our elevator and lay over until the opening of navigation next spring. We are definitely limited to that extent. Whereas we could possibly turn our capacity over two or three or more times if we got into an export business of a consistent character like is now before us; we could probably turn the capacity of the house over two or three or four times.

Mr. Enoch: I object to any further testimony; I don't see how anybody can answer any question positively as has been done here this morning, and all of them going to the future.

Mr. Belnap: I am asking what the present benefits are, Mr. Enoch.

Mr. Enoch: I am talking about your last batch of questions. He is saying that if you do not get what you want in this, that the United States is not going to do any more ex- [fol. 2427] porting of corn; just like telling what the price is going to be six months from now.

The Witness: I do not believe I said the United States would not do any exporting; I said the way it affected us, we have a concrete example right here, right now: we had a stock of corn on hand, quite a large stock, that we could not have moved out of this market at all until next spring if we had not had access to the rates that are involved in this case.

Mr. Enoch: That is just what I say; and I do not believe that you, as good as you are, and I think you are very good,—I don't mean that facetiously—could tell what you would have done with that corn in the circumstances you mentioned three months from now.

The Witness: When you consider that otherwise we would have had an 8½ cent penalty on the corn, can you conceive of anything we could have done with it?

Mr. Belnap: Eat it.

Mr. Enoch: Oh, yes; even I could conceive of things that could be done with it.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. Have the Eastern railroads benefited substantially from that, because barge grain has been able to move via rail?

Mr. Enoch: I object to that.

Mr. Belnap: Let me restate the question: have these [fol. 2428] railroads gained a substantial volume of tonnage which they would not otherwise have had, by reason of the fact that the ex-barge grain has been permitted to move via rail?

Mr. Enoch: Objected to; calling for the conclusion of the witness.

Mr. Cole: And it is already covered three or four times in the record by statistics.

Mr. Belnap: The statistics outbound?

Mr. Cole: Yes, the record is full of them.

Mr. Belnap: You mean cancellation of billing?

Mr. Cole: No.

Mr. Belnap: What exhibit is it?

Mr. Cole: One of them is exhibit 67.

Mr. Belnap: You are talking about cancellation of billing by Norris?

Mr. Cole: Exhibit 77.

Mr. Belnap: I would like to have the question answered.

Mr. Cole: We never will get through if we start going back over this record.

Mr. Belnap: You have heard the gentleman say that year to year is not representative.

Mr. Cole: I have heard him tell me that nothing is representative.

Exam. Taylor: Objection sustained.

Mr. Belnap: I must take an exception.

[fol. 2429] Exam. Taylor: Exception noted.

Mr. Belnap: I think it is important to show in this case what the effect has been as to the tonnage.

Exam. Taylor: Well, it is already in here.

Mr. Belnap: It is for a certain period only.

Exam. Taylor: Will you cover that part that is not in here; I will let that in.

Mr. Belnap: I will be glad to do that. You just heard the talk as to what is in this record, Mr. McClintock; you are familiar with it. Now, taking periods of the year other than those covered by exhibits which show cancellations insofar as the rail carriers are concerned,—these necessarily include the month of December, January, February, March, and April; and insofar as the exhibits of the two houses which gave cancellation of billing which included the last half of January, February, March, and April; will you

please tell us as to whether or not the ability of the barge grain to move by rail has added very substantial tonnage to that which the Eastern lines would otherwise carry?

Mr. Enoch: I object to that; my objection being based on statements of Mr. Belnap himself, that any portion of a year could not be considered. If we get the question correctly, he is limiting that during the period of closed navigation, when it would not be possible to move grain by lake. So that if it moves, we all know it moved out by rail. It [fol. 2430] would not help the record one iota.

Exam. Taylor: Do you have any reply to that?

Mr. Belnap: No, I have no reply.

Exam. Taylor: In other words, you agree with that?

Mr. Belnap: He has made an objection; I have asked the question; it is not debatable. I would like to have the question answered, and if it is not to be answered we will pass it up.

Exam. Taylor: I will let the witness answer.

The Witness: I am not sure that I——

By Mr. Belnap:

Q. May I restate the question so as not to make it so long: will you strike my question? I will ask the reporter to strike my question.

Exam. Taylor: All right.

By Mr. Belnap:

Q. Mr. McClintock, are there any competitive or commercial conditions, or mechandising conditions, within your knowledge, which when accompanied by the rate situation which is now in effect has the result of providing for Eastern lines out of Chicago more tonnage of grain than they would otherwise would handle, if the proposal which they now make were to become effective?

Mr. Enoch: That is changed around a good bit; and that is not the question we were arguing about before. That requires simply a conclusion of this witness; and if it is answered on the record, it would require a long-winded cross-[fol. 2431] examination; because surely I know that Mr. McClintock, salesman that he is and buyer that he is, would not be able to answer that without a lot of other information in the back of his mind. Because if he has gotten grain

from other territory on even rail billing, if he has got a stock of billing in his house on hooks, with tabs on it, he does not know whether he would be using that tabbed billing or water billing. That is not subject to an answer; and I will submit to Mr. McClintock that it is not, unless there is a lot of other information available to Mr. McClintock. And we would have to develop what that background is.

Mr. Belnap: Everybody is anxious to get through, and I hope this threat of a long cross-examination—these Chicago protestants have sat here for about 10 days now, and we are just going to make what case we can——

Exam. Taylor: The witness may answer if he can answer as to facts.

The Witness: I am not exactly sure that I get the question; but I think it may relate to a statement that I made yesterday, that the dealers in Buffalo ordinarily move a considerable amount of grain over to Buffalo just next preceding the close of navigation, and move it out of Chicago or Milwaukee or Duluth. Now, that grain, of course, is over there in the hands of another market. It is over there available for merchandising out of that market on rates as are provided for ex-lake corn. I mentioned too [fol. 2432] that we had at times put some corn over there to merchandise during the winter months. But under no consideration would we feel justified in moving a volume of grain over to Buffalo to represented a five months operation. In other words, we would not want to move our business over to Buffalo at the end of November and stay over there to do our merchandising and still have our operating expense going on at Chicago.

In addition to that situation, the people whom we store this grain with at Buffalo over there do not do it for nothing. We are involved in paying the Buffalo elevators a toll in the way of storage rates not elevation charges, because in most instances they are included in the rate; but storage charges; and at the same time have our normal overhead over here. So the Chicago merchant wants to stay in business at Chicago, and he must then during the winter months depend on rail shipments out of here to handle his business over and above that which he must see fit to move over to the lakes. To that extent the business would then go to the Eastern railroads out of Chicago, serving whatever territory that can be reached during the winter months.

And it is during that period naturally, that our business is mainly dependent on the rail movement out of Chicago.

By Mr. Belnap:

Q. Now, is that same situation you just described true as between Chicago and grain in store at Georgian Bay [fol. 2433] elevators?

A. That is true; as far as New England consuming territory, the Chicago elevator man is——

Exam. Taylor: I think the answer is yes.

The Witness: The answer is yes, surely; the situation is the same.

By Mr. Belnap:

Q. Now, if the barge grain could not take the proportional rates to Eastern Trunk Line and New England territory, would every pound of that grain, other than what might be consumed here, necessarily move out of Chicago over the lakes?

A. I cannot conceive of it moving in any other direction; as the mere suspension or denying the reshipping rate as now in effect automatically places a penalty of 8½ cents a hundred against that grain, there is no conceivable manner in which the grain could be moved into consuming territory other than across lake.

Q. Does this case in reality involve any proposal as a rate to be applied on barge grain, from a practical standpoint?

A. Well, I don't understand that the case involves any change in a rate level; it is just taking—it is proposed to take out the rate that we have, and leave the freight what the man down in the country had; it gives a terminal elevator man a country rate.

Q. But so far as barge grain coming to Chicago is con- [fol. 2434] cerned, for all practical purposes, there wouldn't be any rate in the tariff in the future, is that correct, Mr. McClintock?

A. That is correct.

Q. No rail rate at all?

A. None at all.

Q. Now, it has been suggested that the present adjustment is harmful or disadvantageous to a producer over in Ohio, and the territory intermediate between Ohio and

Chicago; some rail exhibits, for instance, showing that the Ohio producer had a rate to New York of 26 cents, speaking about domestic business, whereas the barge grain would get out of Chicago for 26 cents; do you remember that testimony?

A. Yes, I do.

Q. Well, now, will you deal with that situation?

Mr. Cole: May I ask whether now Mr. McClintock is leaving the general aspects of the case, from a sales standpoint; and whether Mr. Belnap is now tendering Mr. McClintock as a rate expert?

Mr. Belnap: He is going to deal from a commercial standpoint only. Any statement of opinion Mr. McClintock expresses, he is open to cross-examination on them all.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. I just called your attention, Mr. McClintock, to the testimony that the Ohio man who takes a 26-cent rate to New York is in some respects disadvantaged by the fact [fol. 2535] that barge grain in store at Chicago can move to New York for 26 cents; and I would like to have you deal with price and merchandising situation as to Ohio grain versus Illinois grain in shipping to consuming territory in the East.

The Witness: Well, in the first place, the Ohio man compared to the Illinois producer is favored to the extent that his level of rates into the consuming territory is lower to the extent of whatever the Illinois man pays to Chicago. In other words, the common rate structure in Ohio is set up on the basis, as I understand it,—and that has met the situation in the merchandising operations—is set up on a 26-cent level.

Q. What do you mean by that?

A. I mean that he sells his grain on a 26-cent cost into Trunk Line territory, based on New York rate. That is the same as the Chicago grain merchant now sells his grain. So I say that the Illinois man is disadvantaged as compared to the Ohio man to the extent of the amount that the Illinois man pays to get his grain to Chicago; because the Illinois man does not strike the Ohio man's level until he has reached Chicago.

Q. Price level, you are talking about?

A. I am talking about price level based on transportation cost.

Q. To the east?

A. To New York; I used 26 cents.

[fol. 2436] Mr. Day: When you say price level, you mean grain price level, and not rate price level?

The Witness: I mean grain prices which are based on transportation costs. If I want to sell grain to New York, I have to first find out what it costs me to get grain to New York; and my price delivered New York is predicated on that cost.

By Exam. Taylor:

Q. At least, that is one of the elements; whether it is controlling element is a question of doubt.

A. I would say it is the primary element.

Mr. Day: The Ohio man also bases his cost on what it costs him to get from Ohio to New York.

The Witness: That is exactly what I said.

Mr. Day: That is what I thought you said; but Mr. Belnap asked a question there that sort of put a different light on it, as I see it.

Mr. Belnap: I tried not to; I tried to get that before the Examiner——

Exam. Taylor: Proceed.

The Witness (Continuing): It was my conception from the testimony given and the inferences made at least in the testimony and the exhibits, that the Ohio man or the Indiana man was disadvantaged due to the fact that the Illinois man down along the river here had a cheap rate into Chicago.

Exam. Taylor: Proceed.

[fol. 2437] The Witness: But I stated yesterday that cheap rates into a contract market, into Chicago, that the revenue, that the saving, whatever it might have been, accrues to the producing section. But it does not change the basis on which a Chicago merchant sells his grain to Trunk Line territory, because he is using exactly the same factor to determine his cost out of Chicago as he would have at this higher rate in here via rail on the Illinois proportional basis.

By Mr. Belnap:

Q. Is that also true if you are going to compare Chicago with points in Indiana where the rates grade up higher than 26?

A. That is true.

Q. And even Champaign County, where they get up to 38½ cents?

A. That is true in any territory where a competitive situation is based on a movement out of Chicago. The rate into Chicago is of no influence in creating an advantage or a disadvantage against the eastern locations, because the price delivered into that competing territory in the East is based on exactly the same factors as though that grain had moved in here via rail, the exception being that in the case of Central Freight Association territory the barge grain takes a higher rate than had it moved in here by rail; so he is less competitive in that condition.

Q. By higher rate, you are taking the level of the Northwest versus the reshipping rate?

[fol. 2438] A. That is correct.

Q. Of which examples are in the record?

A. That is right.

Q. Mr. Schimmel mentioned the fact that considerable buying of grain which moved in on lake local billing was subsequently reshipped on the basis of transit under through rates lower than the combination of factors to and from Chicago, and gave Battle Creek and some points as the outstanding illustration; can you deal with that matter from the standpoint of the merchandising of grain?

A. Well, Battle Creek differs—the operation in Battle Creek differs somewhat from other industries in that they have—the nature of their business involves a large cancellation against the tonnage; that is, they do not employ transit beyond Battle Creek on around 40 per cent of their tonnage. So the cost into Battle Creek is important to the buyer in that location. We make our sales to Battle Creek on a delivered price, on a delivered Battle Creek price. We make that price delivered up there based on the best tonnage that we have to reach that location. Naturally, we try to keep billing that will go up there as cheaply as possible. The best billing is billing that originates down in central Illinois and pays 12 cents in here, which would go to Battle

Creek for 7. But Chicago does not get a great deal of that corn any more. So we have had to use then, billing, this [fol. 2439] lake local billing where through rates are named from point of origin to Battle Creek. An example of 19 cents was used, which would mean if we acquired lake local billing from a country station down here that paid, we will say 8 cents in on the lake, it would mean it would go to Battle Creek for 11 on a transit basis. It would matter little to us, as we were making a delivered price, whether we paid the inbound line up to the Illinois proportional basis of 4 cents, permitting us to go out at 7. In the final analysis, we are absorbing in railroad charges about 9 cents a hundred.

Q. 11 cents, wasn't it?

A. That is correct; 11 cents a hundred. But that is named in the price. That is, our price to the buyer is based on what it costs for us to get to Battle Creek. And those are the instances which we have used. I don't know of any instance where we have used the reshipping rate, which is 15 cents to Battle Creek. We always find, to be competitive, that we have to seek billing that will go to that destination that is lower than the reshipping rate.

Q. So to that destination, and others similarly situated, the lake local tonnage from a merchandising standpoint is better tonnage than ex-barge tonnage?

A. Oh, yes; ex-barge tonnage is no good to those territories. There is any amount of billing that is better to go up there than ex-barge. Most any of these local points are better.

[fol. 2440] Q. I think Mr. Brennan suggested that the movement of corn in here from the Illinois River valley had the effect of displacing corn which might move in here from other territories; and if I recall, he mentioned Iowa points far distant from Illinois; what have you to say to that?

Exam. Taylor: From what standpoint?

Mr. Belnap: Any standpoint. Mr. Brennan made the statement that was the fact.

Exam. Taylor: From a merchandising standpoint?

The Witness: Oh, yes; from a merchandising standpoint. I understood he complained about it; I did not get Mr. Brennan's——

Mr. Belnap: And I don't think he was asked why; he said he thought that was the fact.

The Witness: I don't know if there are any facts that you could nail down to a situation of that kind. I thoroughly disagree with Mr. Brennan's statement. The Chicago market, to the best of my knowledge, has never said it was not capable of handling all of the business that could come through it; and I don't think that the Chicago market, or any of the mechanics of the market, are of such miniature proportions that we have to limit the territory from which we have to draw grain.

By Mr. Belnap:

Q. To be specific, Mr. McClintock, when Mechling Barge Line brings you in a bargeload of corn which is barged up, it is your own corn that you have unloaded in the elevator, does that stop you from buying grain from any place it [fol. 2441] might be offered?

A. It does not.

Q. That is, to arrive in Chicago?

A. No, sir.

Mr. Enoch: Is that as simple as that, now? Is that where you are going to leave it now?

The Witness: Well, we have not found it necessary.

Mr. Belnap: Mr. Brennan left it very simply, Mr. Enoch.

Mr. Enoch: No, he made the statement that this grain coming in here had fulfilled the demand and supplied grain that would have otherwise come from some other territory.

Mr. Belnap: That is very simply stated, and I didn't hear anybody curious about it.

Mr. Enoch: That is very simple, but you are leaving the idea here that this situation does not affect the price.

Mr. Belnap: If you think it does, you can inquire on cross-examination.

Mr. Enoch: If we go into everything that you brought out on cross-examination, we won't finish today.

Mr. Belnap: I am content to sit with you, sir. I would like to take a five-minute recess; maybe we can eliminate some of these questions.

Exam. Taylor: Five minutes recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. [fol. 2442] Proceed, Mr. Belnap.

By Mr. Belnap:

Q. Mr. McClintock, how would you as representative of the Chicago protestants be hurt if these proposals were made effective, in the light you are a merchandiser of grain here in Chicago and have the same opportunity that anybody would have to do your business on an ex-rail or ex-lake basis?

A. Well, we would all be in a similar position. We could confine our business to strictly rail origins; but that would restrict our operations to the degree of the possibility of enlarging our volume into Chicago by means of the barge movement which, as shown on the record, is of a substantial proportion. During the open season of navigation, of course, we could and would undoubtedly continue to bring barge grain into Chicago and dispose of it across the lakes. During the winter months we would be handicapped in a very decided degree, as I have already testified to here. Our next objective perhaps would be in an effort to dispose of our river business during the winter months, in a southbound direction, which of course would have the effect of diverting the grain entirely away from the Chicago market. For example, today corn accumulated on the river has approximately the same value for movement to New Orleans and thence for export as the movement through Chicago has. In other words, the present 16-cent rate to Buffalo——

[fol. 2443] Q. To where?

A. The present 16 cent rate to Baltimore enables us now to bring that grain into Chicago and use our Chicago facilities, and employ the transportation of the Eastern lines; whereas, it appears to me that our next out on that grain would be the movement of it down the river to lower ports, and in case of export to New Orleans.

Q. There are barge lines operating the year around south to New Orleans?

A. The federal barge line, which is the largest on the inland streams; they suspend their operations along about the time that navigation closes here, but they do renew their activities in the spring some two months ahead of the opening of navigation here. And there are other lines that attempt to give service the year round to the lower ports.

Q. One of them is the John I Hay Company?

A. Well, Hay operates south.

Q. Who else?

A. The largest operator, I think, other than the Federal Barge Line, is the Central Barge Line.

Mr. Day: Do you mean operating from Chicago south?

The Witness: Yes.

Mr. Day: You don't mean operating on the Mississippi River?

The Witness: Well, of course, it depends on conditions [fol. 2444] over there. If it is open,—if ice conditions does not prevent them, I am certain that Central Barge Line would carry on the year-round service, even on the Mississippi; I know that is their program.

By Mr. Belnap:

Q. They certainly do south of the mouth of the Illinois River, do they?

A. Yes, they do.

Q. And from Illinois River landings?

A. Yes, they do; even out of Chicago.

Q. When you mentioned a 16-cent rate out of Chicago you were talking about the export proportional rate to Baltimore?

A. That is correct.

Q. To attract that grain in from Morris or LaSalle to Chicago for that movement, is it necessary to have something lower than the Illinois proportional basis to get the grain in here as against the pull of the grain from Morris or LaSalle to New Orleans for export?

A. I am not sure that I understand your question.

Q. Well, the pull either toward Chicago or to New Orleans is applied at the country point, the river landing, is it not?

A. I would say that the rail rate into Chicago plus the rail rate out of Chicago to tidewater would divert a very large per cent of that grain down the river.

Q. Precisely; and it is the fact that you have a river rate into Chicago that is lower than that Illinois proportional [fol. 2445] basis, the river rate still applying in connection with the export proportional beyond is the factor which pulls that grain through the Chicago market?

A. It is a factor.

Q. Now, would the cancellation of rates on barge grain also affect your operations; that is, Continental Grain

Company's operations insofar as it is a transporter of its own grain on the river; would you be handicapped there?

A. So far as what, transporting grain? We don't transport grain.

Q. Well, have it transported; so far as you are securing the transportation and are actually the consignor of grain on the river?

A. I do not get the question.

Q. I had originally asked you, Mr. McClintock, as to why you would be in a position if this was canceled just to go out and do a lot of rail business; now you pointed out one circumstance to me where you would be disadvantaged by being so restricted. I am directing your attention to the fact that you have facilities of your own on the river;——

Exam. Taylor: Let us see if I can clear it up; do you mean that if the suspended schedules are found justified that Mr. McClintock's firm could ship direct from his river elevator to New Orleans without coming through Chicago at all?

Mr. Belnap: No; from LaSalle and Havana and Pekin, [fol. 2446] or wherever they have river elevators, they are securing the transportation of that grain presently into Chicago via barge now, that being available to go east on the basis of reshipping rates. That is the present situation. I am asking him if he won't be disadvantaged as to that end of the movement if the proposed schedules are made effective.

The Witness: Well, we would be handicapped to the point that we would have to seek an outlet for that river grain through a gateway other than Chicago. And it would be through the lower ports; and in case of export, through New Orleans.

By Mr. Belnap:

Q. If that gateway were not available to you because of a price situation, or anything else, would you not suffer in your competition with ex-rail and ex-lake grain, when you brought your own river grain into Chicago?

Mr. Cole: I object to that. He says now if New Orleans would not be open, would he be subject to certain other disadvantages; and he added in there because of price

situations, or anything else. Surely, that is way beyond the confines of this investigation.

Mr. Belnap: Mr. Examiner, may I make that plain; he can have that New Orleans situation open to him only when there is an export demand. Now, we are not always on an export basis from central Illinois; that is correct, is it not, Mr. McClintock?

The Witness: That is true. In other words, we would [fol. 2447] be disadvantaged to the point where we would not want to store grain in New Orleans in anticipation of business that might arise 90 days from now. Because in the event that anticipation was not realized, you would have your grain very much out of position; whereas under the present situation we can keep our grain close to home, where we have all of the escapes that is afforded in the general rate structure out of Chicago, and we are still in position to employ any domestic markets.

By Mr. Belnap:

Q. Are there times, many times when the export price, whether it be at the Eastern Seaboard or at New Orleans, is not high enough to attract grain from central Illinois?

A. Certainly.

Q. In that situation you are restricted to domestic markets, are you not?

A. That is correct.

Q. You are in the business of buying grain from country elevators in LaSalle in order to put into an elevator whose only outlet is to go south by river?

A. That is correct, at LaSalle.

Q. And you as the Continental Grain Company secured transportation of that grain some place by barge?

A. That is correct.

Q. If there were no export demand which would pull that grain to any port, you would have to bring it into Chicago?

[fol. 2448] A. That is correct.

Q. When you get that grain into Chicago, is it not in competition with ex-rail and ex-lake grain in the hands of other merchandisers?

A. Certainly; that is the case.

Q. And would you not be handicapped and disadvantaged in the merchandising of that grain if there were no rates provided by the railroads by which you could get out?

Mr. Day: Object to the question. I think Mr. Belnap has done altogether too much leading. I have refrained from making objections, in the interest of saving time.

Mr. Belnap: It has been suggested to me I ask questions which could be answered yes or no; and I am trying to do it.

Mr. Day: Who asked that?

Mr. Belnap: Mr. Cole.

Exam. Taylor: Of course, leading questions are objectionable, and I would have to sustain an objection.

By Mr. Belnap:

Q. In view of the objection, Mr. McClintock, I will restate the question: in the event you had grain brought in for you for your LaSalle house in your elevator at Chicago, and in the event rail carriers leading out of Chicago to the domestic markets, provided no basis of rates on that grain lower than the flat or local rates from Chicago, would or would you not be handicapped and disadvantaged in selling that grain in competition with grain owned by other [fol. 2449] merchandisers, which had been received at Chicago either ex-rail or ex-lake?

Mr. Day: That is the same question. I object to it for the further reason that it calls for a conclusion.

Exam. Taylor: Objection sustained.

Mr. Belnap: On the ground that it calls for a conclusion, Mr. Examiner?

Exam. Taylor: Yes.

By Mr. Belnap:

Q. Mr. McClintock, keeping in mind the premises which I gave you in my previous question, would the Continental Grain Company be able to sell some ex barge grain in the domestic markets in competition with ex-rail or ex-lake grain, if insofar as the territory which you had to use rail service to reach is concerned?

A. We could not compete with such a situation; and to that extent our investment in the river houses would be affected. Instead of providing a year-round operation, we would be handicapped to an operation of some seven or eight months during the open season of navigation, where we could employ the only escape we would then have with that origin.

Q. And then during the open season of navigation would you not be able to compete with a destination which required a rail movement to reach it?

A. Absolutely.

Mr. Belnap: That is all.

By Mr. Macaulay:

Q. Mr. McClintock, I have been told that Chicago is the [fol. 2450] largest grain market in the world; do you know whether that is a fact?

A. Well, being a member of the Board of Trade, I will say yes.

Q. Well, would you say it if you were not a member?

A. Yes, I think Chicago has the reputation of being, and is the largest corn market in the United States.

Q. Do you know whether or not there is a different local rate out of Morris on corn than there is on other grains?

Exam. Taylor: He is not a rate witness.

Mr. Macaulay: Well, he buys these other grains, and he knows what the application of the lake locals is. Let me ask you, do you know whether the lake locals is confined to corn?

The Witness: That is my understanding.

By Mr. Macaulay:

Q. You stated that there would be no rail rate at all for barge grain out of Chicago; isn't it a fact that there would still be the local rail rate of 34½ cents per bushel on barge grain?

A. Which is a country rate; it is not based on any inbound factors, movement of grain into the market and thence beyond.

Q. That would be the only rate that would be available for barge grain arriving at Chicago?

A. That is true, by rail.

Q. Do you know whether or not there are any local rates on grain from Toledo and Buffalo to New York and Baltimore which are higher than the rates——

[fol. 2451] Exam. Taylor: He is not a rate witness; make your question as to merchandising, and not as to rates.

By Mr. Macaulay:

Q. Well, as a merchandising expert, can't you answer that if you know?

Exam. Taylor: If you will frame your question so it will cover merchandising.

By Mr. Macaulay:

Q. In your experience as a merchandiser of grain, do you know whether or not there are any local rates on grain from Toledo and from Buffalo to New York and Baltimore which are higher than the rates on traffic reaching Toledo and Buffalo via lake and then going via rail to New York and Baltimore?

Mr. Cole: I object, Mr. Examiner. That is again the same statement. It is simply asking for rates.

Exam. Taylor: Objection sustained.

By Mr. Macaulay:

Q. Do you know of any grain that has been reshipped from Chicago on the local rates out of Chicago, either to Central Freight Association territory or Trunk Line territory?

A. I do not.

Mr. Macaulay: That is all.

Exam. Taylor: Cross-examine, Mr. Cole.

Cross-examination.

By Mr. Cole:

Q. Mr. McClintock, I understood you on direct to say that as soon as you buy grain you hedge it; you hedge all of [fol. 2452] your grain, do you not, that you buy?

A. Yes.

Q. When you buy grain on that 57-cent price you use it as an example now, you will bid 56½ cents in Chicago for it; and if you buy it here in Chicago your firm may make the commission on that purchase; that is correct, isn't it? You buy it then at 56 cents?

A. If we buy it direct from the original seller in the country.

Q. Now, you are a member of the Chicago Board of Trade; when you hedge that grain as soon as you buy it, what is the operation of that hedge,—what would you then agree to sell it for on a hedge?

A. Using 57 cents as the base?

Q. Yes, using 57 cents *cents* as the base?

A. Well, I hedge that grain for two purposes: I want to do one of two things, as I stated on direct examination; there is two things an elevator man wants to do, he wants to merchandise out of his markets, and he wants to be in position to deliver grain if that appears to be the best thing to do from his standpoint. In the case that you mentioned I sell a future at 57, which means that I sell to some buyer that grain at 57 cents in store — our elevator. Do you want me to go through the mechanics just a little further? That is what I receive for that grain in store, located in our elevator. Whenever the buyer takes that grain, if I elect [fol. 2453] to deliver it on that future contract that I made, the buyer that accepts that, he accepts it at 57 cents in store; and then he must pay the elevator operator 1¼ cents elevation charge. We perform the service of loading it out, and for that the elevator receives 1¼ cents a bushel.

By Exam. Taylor:

Q. That is 2½ cents total?

A. Well, of course, 2½ cents,—how did you arrive at that?

Q. I thought you said 1¼ for elevation and 1¼ for the outbound handling.

A. No, that is the outbound handling, 1¼ cents.

By Mr. Macaulay:

Q. Does the man who bought that hedge from you pay you for the storage of that grain during the time after he buys the hedge until delivery is taken?

A. He does not pay storage on it unfil the time he accepts delivery.

Q. And then does he pay storage at the time it is delivered?

A. And the cent and a quarter elevation that he is required to pay entitles him to 10 days free time. That means that he could leave that grain in the elevator 10 days after he received delivery until storage starts.

Q. Mr. McClintock, if you sold a futures contract today for May delivery, and you sold it today at 57 cents, and the corn, say, or the grain was in your public warehouse now that you sold the future on, who would absorb the expense of keeping that grain in your public warehouse to this time [fol. 2454] when you sold a futures contract from your May delivery?

A. I would, in case I was the seller, I would. In case the Continental Grain Company who bought the transaction, they would have to absorb whatever cost there was for carrying that grain up to the time he could make delivery, which would be May.

Q. If you sold a futures contract on grain that you had in somebody else's warhouse, who would pay the storage charges from the time that futures contract sale was made and delivery?

A. What is that, now?

Exam. Taylor: Read the question.

(Question read.)

The Witness: If I owned the grain in some one else's house, and I sold a future against that, say a May future, and made tender of delivery during the month of May, I in that case as the seller would have to pay the storage as long as the title to that grain remained in my name.

By Mr. Macaulay:

Q. If you actually sell the physical grain before the future comes around for delivery, when you sell that grain, do you take into consideration what that grain has cost you, or do you take in consideration the then value of the May future?

A. Well, using that same basis from the standpoint that we hedge grain, we use the future at 57 cents.

[fol. 2455] Q. Yes?

A. And the theory was that we bought the grain at a half under the May future, which was 57 cents. Then, we would have to sell in order to make money when we wanted to make a cent a bushel on that grain,——

Q. Yes, sir.

A. Then in that case I would price my grain at a half cent over the December future.

Q. Wait a minute; half a cent over May future?

A. May future, yes. I would sell that grain at a half cent over May future,—Now, does the fluctuation of the market disturb you there, as to how I might attract half a cent a bushel?

Q. No, I am coming to that, Mr. McClintock; and I know that fluctuation of the market does not disturb you, and that is what I am trying to get on the record.

A. In other words, if the future remained stationary at 57 cents, and I could buy corn at one-half cent under, and sell at one-half cent over, I would make that cent; that is the economics.

Q. Now, suppose you bought this grain and hedged it; and you sold this at 57 cents for delivery in May; and suppose that after you made the purchase and made the hedge sale the futures market goes to 60 cents between that day of purchase and the sale of the hedge and the date of de- [fol. 2456] livery coming along, what do you do then?

A. Theoretically there, in your example, I have a three-cent loss in my hedge; is that correct?

Q. Yes.

A. But the value of corn has followed the value of that future, so corn is still that relative to that future the same price it was when I bought it.

Q. Yes?

A. So I would absorb a 3-cent loss—say I was breaking even on it; for example, I would absorb a 3-cent loss on the hedge, but the value of my corn has increased 3 cents; so I have a 3-cent loss on the one hand, and a 3-cent profit on the other, and break even.

Q. After you have purchased your grain on the basis we have explained, and sold your futures on the basis that we have been through, could you not at all times break even, at least that situation that you have just referred to, if you simply sat still and delivered the goods at the time the futures contract was due to be fulfilled?

A. If that theoretical example that we used worked out in practice, we could, yes.

Q. Then, Mr. McClintock, when you actually sell the physical grain and buy back your futures contract so that you do not have to deliver at the end of the future call, don't you always insist on getting some premium over the future [fol. 2457] basis that is being quoted?

A. We strive for that, but it takes two to make a trade.

Q. Yes.

A. And I would not say we would be successful about it. I would not say that that would be our objective, either; because the condition here from an elevator standpoint, I might be and it is likely that I would be more willing to deliver corn than I would to sell corn, if the same price was involved.

Q. Yes?

A. If the same results were involved.

Q. Yes?

A. Because frequently the public elevator man in that transaction, he at least has the opportunity of securing some storage on the corn.

Q. Yes?

A. So I would not under normal conditions be particularly anxious to dispose of the physical corn merely because I could get equal to the delivery price.

Q. Now, when it comes to your attention, and you are placed in the position of considering a sale, do you in any respect after you have bought the grain and made your hedge, go back and consider before you make a sale what you paid for the grain; or do you rather consider the relationship of price that you can secure with the then quoted market of your hedge?

A. Mr. Cole, there are always circumstances that help [fol. 2458] you make up your mind what you want to do about the particular transaction when you are deciding what could be done. Now, I would not say that the terminal elevator operator as a practice refuses to sell grain, because he has not accomplished his intended purpose and made a profit on the grain. And I will give you an example, why he might be justified in selling his grain, for example, without a profit or maybe a small loss;——

Q. Pardon me; I don't mean to interrupt you, and you can explain; but my point is just the one little thing, and that is all right now that I am interested in; and maybe we can shorten it: in other words, when you are considering the sale and I am coming to you and want to buy corn from you, all I want to know now is, do you go back to your books and see what you paid for that corn; or do you sit and figure —this is the first thing—just consider this point alone:—I don't know whether this is the first thing you consider, but do you figure my willingness to pay you the rates you paid for that future contract at the time you bought the corn?

A. You mean my price to you, would it be predicated on what that corn cost me in dollars and cents at the time I bought it?

Q. Yes.

A. Or would my price be based on the relative relation to the future?

Q. That is it exactly.

[fol. 2459] A. It would be the relative relation to the future at the time you wanted to buy it. It might be 10 cents away from the level at the time this transaction was originally made.

Q. Now, another question: suppose that that futures market at the time I came in to buy corn from you is 10 cents away from the level at the time you bought the physical corn, whether that level be up or whether that level be down, it would not affect you in your ability to talk to me about sale of the corn at that time with relation to that future, would it; because if you took a loss on your future contract you would make a corresponding profit on the physical delivery of the corn, and vice versa; isn't that so?

A. That is true; and that is why we are interested in having billing that we can make delivery on future contracts.

Q. Have you at any time experienced a situation in the Chicago market where hedging could not be done? You are always able to hedge, aren't you,—and you always do?

A. There have — one or two exceptions in my recollection, where you could not execute——

Exam. Taylor: A little louder, Mr. McClintock.

The Witness: I say there has been a time or two in my recollection that you could not effect future transactions in the market. Could I explain that?

By Mr. Cole:

Q. Go ahead; is it unusual?

A. For example,—it is unusual, most unusual, and as I [fol. 2460] say, has only occurred a very few times, to the best of my knowledge.

Q. Yes.

A. For example, we have in effect limits which the market can fluctuate. When we first got into the war in September, I believe it was; and, of course, it was what we term a bullish influence on the market, and I believe the limit in fluctuation at that time was set at 5 cents on wheat. Well,

of course, the market when it opened went up at that point and it was 5 cents over the previous call bid all day, and no sellers. So in that case you could not execute a contract. There have been a few instances like that. But as a very general case, the Chicago futures market is able to absorb almost unlimited transactions.

Q. Is there a like maximum variation in the market on corn also, that would work the same way?

A. Yes, there is.

Q. What is that maximum variation limit on corn?

A. I believe it is 4 cents; I am not sure about that.

Q. At one point in your direct——

A. I want it understood that I am not certain what that is right now.

Q. All right; you said at one point in your direct that in 1939 the amount of grain shipped out via rail carried in it some balances of corn inbound to Chicago which had come in on the laks locals during the preceding year, and which [fol. 2461] still enjoyed the right to move out before that local rate was restricted as to transit; do you remember that?

A. If I said that we used lake local billing out that had accumulated the preceding year, I did not say what I intended to. I don't think I said that. I said that there was on hand in 1939 billing that the elevators had accumulated during the year of 1938 and the early part of 1939. That was not lake local billing, but was Illinois proportional billing; as there were no local rates in effect at that time.

Q. The impression I got,—I may have been mistaken about that—you said that their billing had been accumulated before the lake locals had been in effect?

A. Yes, I did.

Q. Do you recall that the lake locals, some went in in 1933 and 1934?

A. I remember there were some lake locals in effect for portions of the year.

Q. When any of those lake locals were effective, did they not also provide that transit was not to be permitted?

A. Yes, they did. It was my understanding that those rates in those cases were in effect only during the open season of navigation here, or during the spring and summer months.

Q. When you buy tonnage of grain, and when you pay in the price for that any premium as a value not in the grain

but in the billing, don't you keep that billing separate and [fol. 2462] use that billing for outbound movement of grain where you get the benefit of that premium at least?

A. I would say as a practice, Mr. Cole, that we would not pay a premium for billing unless we knew what we were going to do with it. For example, I might know that a certain territory in the Mississippi Valley can be reached from Chicago if certain billing is avalable here; and if that billing is available I will pay a premium for it up to the extent that it will allow me to participate in the destination that I want to go to. But as a practice, just merely accumulating a stock of grain, we would not pay a premium for corn. There is occasions that after we have accumulated this stock of corn that these same conditions arise, and we might have acquired that billing without paying a premium for it.

Q. In your normal operations, and I am asking you this now inasmuch as you can tell whom of this group that you represent,—you represent here a group that handles approximately 83 per cent of the business in and out of Chicago; in that 83 per cent there is grain coming in here rail and ex-water; in your accumulation periods, is it not true that you accumulate through your purchase operations, this group grain with every sort of billing behind it that it is usual to receive in this market?

A. I would say that we do in our transactions get all kinds of billing; yes. But it is the practice to limit our [fol. 2463] purchases of in billing that has the least possibilities in it, or that you are required, that you can only do one of several things that you might be able to do with other billing. For example, we have corn coming in here off of lines out of Indiana that is restricted to an outbound movement on that particular line. In other words, we have to originate business on their line,—we have to originate business beyond in order to dispose of that billing. Now, that is not good billing to have.

Q. But in the course of your ordinary accumulations of grain during the period that you are accumulating it, you do customarily, year in and year out, purchase grain from any origin that you may get it and put it in a house; so that after you bought your grain in your accumulation you will have in the house billing of almost every description that does come into the Chicago market; is that not a fact?

A. That, as I said, we would probably get some of every

kind of billing; but we are very careful about the percentage of certain classes of billing.

Q. That is understood; but what I was getting at is after you have filled up your stock in your warehoues it is quite customary, and happens year in and year out, after you will have acquired that accumulation you will also have acquired bills from every possible source, and subject to every possible impediment that pertains to the Chicago market; [fol. 2464] is that not correct?

A. With the reservation that I just stated.

Q. Well, you will even have some of that?

A. I said there was a possibility we would have some of it. But we restrict our buying; we do not want to accumulate billing that we can only do one thing with it.

Q. That is correct; you don't want to accumulate it; during the course of your accumulations you will have accumulated it through the year?

A. I would say that we do; whether it is one car,——

Q. That is right.

A. One car would be some, and that might be the amount that we had.

Q. Now, when all of that grain was purchased during your accumulation period, no matter where it came from, and no matter what sort of transportation it used to get here, you paid for that grain the Chicago delivered price on the day that you made your purchase, as we have described before, did you not?

A. We paid the Chicago price for the value of that particular grain, whatever it might have been; I would not say we paid the same price for all of it.

Q. Oh, no; if you bought it over a period of time that value would fluctuate?

A. I mean even the same basis. I will give you a little example:

Q. All right.

[fol. 2465] A. It is this Indiana billing, for example, that I told you that it comes in here with quite a high differential between the local and the proportional rate; and it runs up four or five or six cents tied up in the billing, that we invested in that billing.

Q. What point in Indiana, now,—can you give us an origin?

A. Well, it is quite a general territory in western Indiana. And as I say, during the wheat movement we don't

know exactly what we will be able to do with that. We have got a tieup here that we cannot get that money back by loading it out on a boat, except in some examples that were referred to in the testimony here and explained. So we have got that tieup billing, and we know that we have got to go back to an eastern destination by rail to recover this tieup, as we call it. And the reason that it is a tieup, the basic value of that corn is based on the lower rate, the Illinois proportional rate, whereas the freight is based on the local rates; so we have a tieup in that billing until such time as we can make shipment to the proper destinations that the tariff provides that we have to go to to recover that. So we don't like to do that. And usually there is a sort of a commercial agreement made between all interested parties, the elevators, and the receivers; and the elevator takes on part of the hazard that is involved in a situation like that by buying that grain at some discount. And the shipper is allowed to get the benefits of his cheap [fol. 2466] Illinois proportional rate to whatever extent the compromise amounts to.

Q. Now, grain that you do bring in here and place in your elevator, and register the billing with the transit bureau, how long a time do you have within which to use that transit billing and cancel it?

A. Well, rail billing—I don't care about answering that question; I can only give you just my understanding of it.

Q. That is all I want.

A. I believe that rail billing is considered live for transit for a year, and that you have a year's extension privilege on it. I am not certain of the mechanics of it, or that I am right about the time.

Q. That time is carried in the transit tariff that we introduced in the record here, is it not?

A. I don't know.

Q. You are familiar with the fact that there is a period of at least one year within which you can use your billing?

A. That is my understanding, that there is an extension privilege.

Q. And that there is an extension privilege beyond that one year time?

A. I suppose that there are certain circumstances that permit that, I am not sure.

Q. Now, if grain came in to your elevators close to the [fol. 2467] end of navigation that year, and after navigation that year, it would be possible, would it not, to take that grain and allow it to constitute a part of your stock on hand, take that billing, keep it in your office until the next spring, and use that billing for lake shipment out when navigation opened up the following year; that is physically possible, isn't it?

A. Are you referring to any particular kind of billing?

Q. I am talking about billing that you get, say on the lake locals, that could not go out by the use of the rail proportionals, that you had to ship it out over the lake?

A. That could be done. As a matter of fact, I don't think there would be any loss incurred if you confined your shipment out by lake, if you shipped it out five years after, and your billing died, if you were just confining your operations to a lake movement.

Q. So that that escape is possible when navigation reopens?

A. Yes.

Q. Now, operators as large as the group you represent, operating about 83 per cent of the volume in and out of the Chicago market, is it often that those men during their accumulation period have failed to accumulate sufficient billing of rail permission out so that at the close of navigation when they buy this other lake local stuff that has to wait until spring they do not also have on hand stocks which can move out, and billing which can move out via rail?

[fol. 2468] A. That would be the desirable situation, Mr. Cole, to adjust your business to that basis. But the desire or wish to do that does not necessarily make it possible to do so. Though, as I have explained here, the trade territory from which Chicago is most likely to draw its corn is now practically all inflicted within an area here of about 375 stations. It all has an infliction on it, a penalty against it. So the mere desire to accumulate the billing that you want to do the thing with that you suggested there cannot always be accomplished; and that is the reason we are in this case today. We are trying to retain the only kind of billing that we can do those things with.

Q. Mr. McClintock, how often in your experience as a grain operator in the Chicago market, have you, since you were connected with this group, and particularly the Con-

tinental, how often have you been considering a sale which would necessitate a rail movement out of Chicago where you found it so that you did not have in your office the kind of billing which would enable you to move that grain out on the rail proportionals?

A. Many times.

Mr. Brown: A rail billing?

Mr. Cole: Yes, a rail billing in.

The Witness: We have a situation of that kind right now. We have a stock of white corn that we cannot reach the consuming trade on a basis that will permit us to move it there on account of the restrictions that are placed on the outbound billing.

[fol. 2469] By Mr. Cole:

Q. Where did that white corn come from, and what are the restrictions that there are on that?

A. The white corn territory in this state is pretty much within the area that is described in this lake local territory.

Q. And the restriction that is against that rail billing, now, what is that restriction?

A. Restriction on an outbound movement coming in here lake local; we are penalized to whatever extent the inbound lake local differs from the Illinois proportional rate.

Q. You are suffering right now because there is actually, because there has actually been rail shipments into your place, Chicago, from rail origin territory, which rail shipments cannot move east of Chicago on the rail proportionals; is that correct?

A. Correct.

Q. Whereas there is in your house ex-barge grain from a river origin which moved to Chicago via the river, which could go out in preference to that shipment of rail grain in here that is subject to that impediment; is that correct?

A. To certain destinations.

Mr. Belnap: Might I inquire, just for purposes of clarification there, is that restriction that you speak about, is the restriction in the western lines' tariff, that provides that rate is an intrastate only and cannot be used?

The Witness: That is my understanding; the penalty is [fol. 2470] assessed by the inbound carrier in the case I referred to.

By Mr. Cole:

Q. Mr. McClintock, you referred at several points in your direct to this merchandise grain, corn which moved down to the foot of the lakes; you say there are dealers down there, and warehouses down there that move their grain down during the period of open navigation, and they have quite a stock on hand at all times; isn't that correct —so far, isn't that correct, they have large stocks on hand at Buffalo?

A. To a greater extent, yes.

Q. So those are in a position to make deliveries into the eastern area of the United States, is that correct; they have got the stock over there?

A. That is correct.

Q. Now, that stock has moved over there with the view of saving the transportation cost by using a cheaper form of transportation cost, has it not?

A. From whose viewpoint; from the viewpoint of the dealer in Buffalo, that is the reason he brought it over there?

Q. Yes.

A. Well, of course, his reasons for bringing it over there is because he is in business over there, and he must get the grain over there before he can utilize the facilities that he is operating. I presume the rate situation has some bearing on it, that if the water transportation affords him a cheaper through rate to where he anticipates he will market that [fol. 2471] grain he will to that extent use the water transportation.

Q. Now, during the winter season when your lake is frozen up and you got a stock on hand at Chicago, and you get bids for the merchandise, and then the Buffalo man gets bids for the merchandise, and the Green Bay man gets bids for the merchandise, and you have all got stocks of goods on hand, the Buffalo man, the stock over there that moved water, and your stuff that is landlocked here during that time, from the basic economic viewpoint which man is going to get that trade?

A. Predicated on what, on the rate structure that we have today or the proposed rate structure that is involved in this case?

Q. Based, let us — on the proposed rate structure that we have.

A. Then we would not even consider ourselves competitive; so far as the competitive situation is concerned, it would not exist.

Q. Based on the present rate structure?

A. Based on the present rate structure, and based on the factors that made up the transportation cost as put in these exhibits; namely, a level of lake rates that were in effect during the latter part of 1939, there would not be so much difference to most destinations. In other words, supposing a Chicago dealer just absolutely wanted to keep himself competitive with the Buffalo dealer all the year around, and to do that he would have to move a stock of grain over to [fol. 2472] Buffalo preceding the close of navigation, he would have to consider this: now, I can get to these domestic markets in the east, or New England states, for about what the Buffalo dealer —, based on the cost of transportation that is set up in these exhibits.

Q. Wait, please; don't base it on the cost of transportation as set up in these exhibits; base it upon your experience and what you know lake transportation to be.

A. That is my experience.

Q. Your experience mostly is transporting it when it is two cents a bushel via the lakes, instead of when it is 6½ cents on the lakes, as is absolutely shown in some of these exhibits?

A. You are mistaken; there is no 6½ cents a bushel on the lakes,—6½ cents a hundred. Carrying that thought along, we will say that under the present rate structure the Buffalo man still has on the face of it a cent a bushel advantage of me. Now, under that condition am I as a Chicago operator justified in moving a lot of grain over to Buffalo to compete with Buffalo, as long as there is only a cent difference in the situation?

Q. Yes, sir.

A. No, we are not; we are justified in moving a little over there that we can merchandise say within 30 or 40 days of the time it arrives there; but we are not justified in putting grain over there to compete with that man all winter, because we might have to pay that same competitor storage to compete with that grain.

[fol. 2473] Q. I understand that.

A. And at the same time we would carry on our operation here; we would keep our grain here, and we can sell and still compete with the Buffalo man without paying a

toll for the transaction involved for a Chicago merchandiser.

Q. During the period of closed navigation the man who has his stock of merchandise at the foot of the lakes is in an advantageous situation, so far as your competition with him during those winter months is concerned, with your stock of merchandise in Chicago?

A. He is in competition; yes, sir.

Q. He is in an advantageous position?

A. I would say that he was in an advantageous position, based on the differential on what I can escape for in the winter months and what he can escape for based on taking his grain there in November and carrying it through the winter.

Mr. Belnap; And then going out on ex-lake rates?

The Witness: That is true I said, not because of transportation which would include ex-lake rates; but we do not foster any further advantage merely because he already has it.

By Mr. Cole:

Q. Now, suppose that this situation were brought about, Mr. McClintock: suppose that the present tariff change is made effective so that the ex-river grain does not have the availability of the proportional rates east, and suppose that these lake local rail rates into Chicago were given the priv- [fol. 2474] ilege of using those proportional rates out, or the transit rates out, so that the lake local grain, the rail grain could move through, I understand from your direct that then that lake local rail grain would not be an impediment in the market. Would that change anything here if that shift was made?

A. You mean change the—would it lessen the effects that would and will result in denying the elevators here the reshipping privilege,—would it tend to soften that condition; is that what you mean?

Q. Well, for instance, here is what I am getting at: if you could use the inbound rail tonnage, the local tonnage on transit, would there be any question in your mind that all of this ex-river grain would without any difficulty find its escape over the lake?

A. Yes, I think it would. I think it could be done. Now, based on the condition that the lake local rates as now in

effect can be made applicable on the proportional rates, the proportional and reshipping rates out of Chicago?

Q. I said that as a supposition, yes.

A. That would be a very happy situation, so far as the Chicago elevators are concerned, and we will vote for it.

Q. If that happened, and if you had without any question escape over the lake for every bit of ex-river grain that you could anticipate receiving, would there be any change in the slightest degree with reference to the Chicago [fol. 2475] prices and those secured for the ex-river grain down in the country.

Mr. Belnap: May I be sure about that question: that is on the same premise as the previous question; in other words that the present lake locals are made interstate rates?

Mr. Cole: Yes, sir.

The Witness: I am not sure that I just quite understand you.

Mr. Belnap: I would make this observation: there is no proposal to make the lake locals interstate rates; and so what would happen in that situation seems to me to be quite immaterial.

Mr. Cole: All right; I probably can put it in another way: Mr. McClintock, if you had a lake outlet assuredly for all of your ex-river grain, would there be any change in the relative price situation as between the origins in the country down along the river and the Chicago market?

Mr. Belnap: May I inquire again, are you not on the same premise?

Mr. Cole: No.

Mr. Belnap: You are on the premise that the lake locals stay as they are, with penalties against them because of the inbound?

Mr. Cole: No, sir, Mr. Belnap; I did not say that.

Mr. Belnap: Well, you had that premise in your previous [fol. 2476] question; now, do you withdraw it?

Mr. Cole: I started all over again.

Mr. Belnap: I know, but if it is just a premise that the lake local situation remain as it is today,——

Mr. Cole: No, I didn't have that anywhere in the question at all.

Exam. Taylor: Read the question.

(Question read.)

Mr. Belnap: He didn't state either one way, either one thing or another about it, Mr. Examiner; but he had previously stated to me that was the premise of a question. Now, he says, I will start all over. And I want it clear. May I go off the record a minute?

Exam. Taylor: Yes, off the record.

(Discussion outside of the record.)

Exam. Taylor: The witness may answer.

The Witness: Your question, your query was on the basis of would there be any change in the price?

By Mr. Cole:

Q. Relativity?

A. Relativity as to the value of barge grain and grain that arrived here on lake local?

Q. No, sir; I cut all of that lake local stuff out of my way; what I am trying to get at, Mr. McClintock is this: Continental Grain Company, Norris Grain Company, and other grain dealers have made important and substantial invest- [fol. 2477] ments in facilities along this waterway; they have been seeking the grain from that area. The grain has come into Chicago in increasing amounts. During 1939 14.85 per cent of the total receipts of corn in the Chicago market came from the Illinois waterway; and of that, I take it, 83 per cent was handled in and out or by the men and interests that you represent here. Mr. McClintock, would those men and the interests that you represent, and do you seriously anticipate any infirmity or any trouble with your ability, considering your volume, considering your interests down along the Illinois waterway, in handling every bushel of grain that you receive from the Illinois waterway origins?

A. I would say that we would be handicapped.

Q. You say that you would, or would not?

A. Would; if we are confined to strictly a lake movement out of Chicago with that grain so originated. And I think I made that plain in my direct testimony, that it would—our ability to accumulate grain would be limited and restricted for about five months out of the twelve; four or five, whatever the distance is between the close and the opening of navigation.

Q. I don't think you quite see my point yet, Mr. McClintock; I am talking to you now as the representative of the

firms who handled 83 per cent of the business in and out of Chicago. The record shows so far that the relative volume [fol. 2478] of traffic outbound from Chicago via water and rail has varied materially; and you will agree with that, won't you, Mr. McClintock?

A. That is true.

Q. Your figures were that during 1939 the shipments that were made by the firms that your interests represent, that you represent here, shipped some 44,000,000 bushels out via rail and 55,000,000 bushels out via lake; am I correct?

A. That is true.

Q. Your total receipts of grain from the Illinois waterways in the Chicago market has accounted for some 14.85 per cent of the total receipts of corn in the Chicago market; I am asking you now as a business man, if you have valuable investments down along the Illinois waterway that you own yourself, and your outfit does, and the interest that you represent, elevators down along the Illinois waterway built for the purpose of buying that corn down in that territory and moving it up here via water; can you conceive, with more than half of the business going out of Chicago today via lake, any possible serious difficulty with your ability to handle 14.85 per cent of the receipts into this area?

A. I think I can answer that: it should be recalled that this 52,000,000 that was moved out via lake was moved out during the open season of navigation, of course?

Q. Yes, sir.

A. Having these facilities on the Illinois river, and if we [fol. 2479] were to want to utilize them, which we naturally would, during the winter months, then we must use all of our space as a storage space for the purpose of taking care of our river corn that originates at these points where we have our investments. And to that extent we would not have participated to a volume of 44,000,000 bushels in 1941, if that is when the new rate would become effective, as we did in 1939 under identical conditions. In other words, our business from the river direct would be restricted to the limit of our capacity in Chicago to store that grain, so far as Chicago was concerned. Our operations on the rail movement, to that extent, would become almost entirely extinct.

Q. On ex-river traffic?

A. On any grain, if as you say—you premised your question on the basis that there was a condition in which we could escape across the lakes on a greater volume of business than is now indicated is moving into the market via water.

Q. No.

A. Yes.

Q. No.

A. You premised your question on the basis that there was an escape across the lakes for a greater amount of corn than was now coming into Chicago via river; in other words, you held that up as a basis where we would not be affected by it.

Mr. Belnap: Mr. McClintock, in your answers when you [fol. 2480] talk about being tied up, and put out of that business,—if you handled that business,—you would be completely tied during the period of closed navigation?

A. I am taking this position: that we are going to handle all of the grain that we originate across the lakes; then we have to use our terminal elevator here in Chicago to store the grain so accumulated during the winter months.

Mr. Belnap: That is right.

The Witness: And if we are going to use it only for that purpose we cannot participate in any rail business out of here, even if it was offered.

By Mr. Cole:

Q. What I was coming to is, if you ship about 52,000,000 bushels during a season via lake, and get in from all of the river origin points 10,000,000 bushels, why are you going to have to store 25,000,000 over the winter, of river corn?

A. Whatever the amount is. If we had our operations set up on a basis of doing a river business only when the lakes were open, we could accomplish the purpose that you suggest.

Q. All right, now, Mr. McClintock; when does the river grain from this origin territory begin to come upon the market; when in every year do you begin to buy up this river grain?

A. You cannot—we are affected temporarily by conditions such as we have now; but this is the first time, to my

knowledge, since the winter of 1935-1936 that there has [fol. 2481] been any restrictions on the movement of grain the year round via Illinois river to Chicago.

Q. When you consider getting in Chicago from these river origins, a volume that will run ten or eleven million bushels a year for the calendar year, how would you say that 11,000,000 bushels moved in here; would that move in approximately a million bushels a month, or would it be an even amount every month?

A. I think that could be said, that that is about the way it moved.

Q. It moved in here about one million bushels a month?

A. I think that is fair.

Q. When is the lake open?

A. It varies from April 15th to May 1.

Q. Well, to be fair about it, let us say May 1, the latest period;—when is it closed?

A. Around the first ten days of December.

Q. Assume December 1st, say; now, there is seven months then in which from—in which time 7,000,000 bushels of grain have moved in here over the waterway; and when that moved in you could ship it out via lake, couldn't you; you wouldn't have to store that in this period?

A. Not if we—we wouldn't have to, no.

Q. You could move that out over the lake; so that of an 11,000,000 bushel total amount there would be 4,000,000 [fol. 2482] bushels that would be held up because of closed navigation; is that correct?

A. Four or five million.

Q. And what is your storage capacity, of the group that you represent, that ships out some 83 per cent of the handling in Chicago on grain?

A. The estimated capacity of our elevator is four million bushels.

Q. You are talking about yours only?

A. Continental Grain Company.

Q. What is the elevator capacity of the whole group,—because this grain, I understand, is being handled by the whole group?

A. About 32,000,000. Some of that now—there is about 25 million on the water.

Q. 25,000,000 bushels could be stored, with a possibly carryover of 4,000,000 bushels? I think that is all on that.

This grain that you have purchased along the river, and that does have the ability to escape via the lake, that you purchased during the seven months period when the lake is open,—and looking at this matter now from the standpoint of that period of open lake navigation, would anything that we propose here affect in the slightest degree the price that is paid for that grain down in the country with relation to the Chicago price; when you know you have an escape via lake?

[fol. 2483] A. In the first place—yes, sir; answering your question directly right here. I am sure that you appreciate the fact that the operators of these terminal elevators here are not necessarily operating only on this 12 or 13 million bushels of lake billing corn in here. It comes in here and there are other uses we employ our elevators for, such as bean storage, and the wheat business, and the bean business, and any number of businesses that are not involved in this case, other than so far as the rate situation is concerned. I mean that we are not confronted with wheat and beans on the lake local question. So our elevator capacity is engaged in handling those commodities as well. And at the present time—now, you speak about our capacity;——

Q. Wait, Mr. McClintock. Pardon me, I don't mean to unnecessarily interrupt; but I am not asking about the different periods of the year now. I don't mean to go into that; I mean that during this period of open navigation, seven months' time, when and during which you could have either the ability to go over the lake to the east, would the price that you pay for corn down along the river during that period be just what it has been described to be in this record with relation to the Chicago price? Would you go down there when this market is 57 cents, would you go down there and bid 56½ cents; and if you bought it from a commission firm here would you pay them 56 cents, so that the man down there, you could pay him 56 cents, less [fol. 2484] cost of transportation to Chicago?

A. I think I stated in the record what would happen in that regard during the winter months was somewhat problematical. I can say however that any condition in the marketing scheme that is based on a one-factor escape for grain that you accumulated is hurt and penalized.

Q. I beg your pardon; but again you state in your answer

during the winter months; and my question has been addressed from the start to the period during open navigation.

Mr. Belnap: That is, Mr. Cole, you want the effect on the country prices during the period of open navigation of what is here proposed; is that what you are asking about?

Mr. Cole: Yes.

The Witness: During the period of open navigation, and on past experience here where there has been a movement out I can see where you would have an escape for all of our barge billing; and I would not be willing to say that the price in the country would have to be discounted under that condition. But——

By Mr. Cole:

Q. Well, now, wait:——

Mr. Belnap: Let him finish.

The Witness: —but as stated, any marketing condition based on a one possible outlet for your grain is a very hazardous situation; and the elevators would be assuming quite a hazard under that condition.

[fol. 2485] By Mr. Cole:

Q. Yes, sir; and, Mr. McClintock, you are subjected to that present hazard which you have been so worried about on every pound of corn you buy with a lake local billing behind it, are you not?

A. Yes, sir; other than facts that have been pointed out here, that there is some escape with that.

Q. That lake local billing, outside of the few points where you can use a balance of the through rate, all of that lake local billing is absolutely limited to the one outlet of the lake, is it not?

A. If you don't want to absorb a penalty.

Q. And you said that that would be impossible?

A. That is true.

Q. So that we cannot, as a practical matter, consider it?

A. As a practical matter it is an impossible rate.

Q. However, that lake local grain that you secure, and the grain that you secure along the river has this difference, does it not: when you have a facility along the river which has cost you an investment of quite a substantial

amount, and you have one outlet for grain, you are buying it through that facility—you have your own employes in the field; you are down there with a branch house; then, as a business man, wouldn't you buy enough from there, if you had to cut down some place else you would buy less of the lake local billing, would you not?

A. I think that is exactly what we would do.

[fol. 2486] Exam. Taylor: We will recess until 1:00 o'clock.

(At 11:55 o'clock a. m., a recess was taken until 1:00 o'clock p. m., January 26, 1940.)

[fol. 2487] Afternoon Session

The hearing was resumed pursuant to recess.

1:00 P. M.

Exam. Taylor: All right, gentlemen. Are you ready to proceed? Off the record just one second.

(Discussion outside the record.)

Exam. Taylor: Proceed, Mr. Cole.

J. O. McClintock resumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Cole:

Q. Mr. McClintock, when you purchase grain from the——

A. Mr. Examiner, I would like to start in where we left off and I would say that I had not finished the answer to the last question.

Q. Do you recall what we were talking about?

A. That is a little bit——

Mr. Belnap: Off the record.

(Discussion outside the record.)

By Mr. Cole:

Q. During the season of open navigation would the grain that you secure from the river origins be related to the

Chicago price in the same manner in which it is now related to the Chicago price?

Mr. Belnap: That is assuming the proposal under attack?
[fol. 2488] Mr. Cole: I don't want to assume anything. I did not assume anything other than stated in the question.
Mr. Belnap: You said, "would it"? Under some circumstances it must be, Mr. Cole.
Mr. Cole: I said during the season of open navigation.
Mr. Belnap: Then you asked him about a future, would it?
Mr. Cole: Yes, during the season of open navigation.
Mr. Belnap: But you must necessarily be assuming if the proposed rule becomes effective, are you not? There is nothing to answer about otherwise.
Mr. Cole: Well, all right. Now, we will put Mr. Belnap's——
Mr. Brown: Do you mean it would be the same as it would during the closed season?
Mr. Cole: No.
Mr. Belnap: The same way as it is today?
Mr. Cole: No.

Q. If the proposed rule is made effective and is in effect next summer during the period of open lake navigation and you buy grain next summer down there in the river origin country, would then the price that you pay in the river territory be related to the Chicago price in the same way in which it is now,—in which it was this past summer related to the Chicago price?

A. I would say during that period, based on conditions, general conditions being the same next summer, in the [fol. 2489] period you mentioned as they are under ordinary circumstances in preceding years that the price during that period would not necessarily be different from the situation as it now exists and I believe the proposition was mentioned by you that we would in that event, if we found it necessary to use the lake as the outlet for our accumulations on the barge, that we would necessarily buy less lake local corn. That was incorporated in your statement, I believe, previous to our adjournment.

Q. All right. Previous to adjournment I had been talking about that but now I will ask you again, if you during the season of open navigation on the lake secured approxi-

mately one million bushel- a month from your river origins of the river corn, which corn you were making disposition of out over the lake, would you during that same period, to-wit, the period of open navigation purchase the lake local billing?

A. We would purchase less of that lake local billing because we would then be using the outlet that we had formerly had for lake local billing with our barge billing entirely and to that extent the buying power of Continental Grain Company and the other elevators in this market similarly situated would be lost to the market here and the effect would be that the lake local billing corn would probably drift in value to the differentials that exist between the lake local basis and the I. P. basis, in which event the producer would be the primary loser in such instance. [fol. 2490] Q. Now, Mr. McClintock, I am asking you this as a representative of that group that you do represent: If both the ex-river grain and the lake local grain were placed in the same category, limited to escape via lake, and if there became necessary to you to make any choice as to which avenue you would cut down on what would be your cut down area?

A. Mr. Cole, as an operator of a grain elevator in the Chicago market we are unwilling to trade anything we have for something we haven't got. We would like to have the additional benefit of having the lake local corn work in the same manner that our barge billing corn does but we are unwilling to make any trades to accomplish that purpose, if that is what you mean.

Q. No, I am not asking you as if you were in position to make a trade. I said that suppose——

A. Well, it is an assumption and your question was an assumption.

Q. No. Now, let us suppose that this situation actually faces you as a fact: If this proposed change was made effective on the rates and if the ex-barge grain had only the oultet of the lake and if the lake local rail grain had only the outlet of the lake and if you were forced as an operator to choose between your area of origin in which you were securing your corn, would you continue to get all of the ex-marge grain that you could possibly get or would you continue to get all of the lake local billing that you could possibly get and if you had to make a choice between

[fol. 2491] them which would you cut down upon in quantity?

A. Your question is based on the premises that if the situation developed where the barge billing and the lake local corn all worked out of here under the same rate structure?

Q. Yes, sir.

A. And that the value of one, so far as that is concerned, was comparative to the other?

Q. Yes, sir.

A. That would depend on how the equalization was effected. If you make that equalization by restricting the movement from both of those origins via lake rather than making the lake local applicable the same as barge billing now is there would be a considerable difference in my answer.

Exam. Taylor: Well, right along that line, if you will permit an interruption: Mr. McClintock, if you had flat rates into and out of Chicago would that eliminate any necessity for discounting the price of grain?

The Witness: Mr. Examiner, it is my opinion that if we had only flat rates out of Chicago from the territory that we originate our grain from, and this particular grain that we are referring to here in the lake local and barge territory is in the doorstep of Chicago, there wouldn't be any excuse for anybody going into the grain business in Chicago. Our out then would be to get out of the Chicago market because you could not continue to conduct a merchandising business through a channel that has those handi-[fol. 2492] caps placed against it.

Q. Well, my question intended that all of the rates would be on a flat rate basis into and out of Chicago.

A. In and out of Chicago?

Q. Yes, on an equality.

A. That would depend then on how we were equalized with other gateways. If you get down strictly to a mileage basis, and that is what I understand your question might imply, then we would find a lot of markets like Chicago and probably other locations rather misplaced and I don't think that we could qualify the possibilities that might exist under those conditions.

Exam. Taylor: Well, that is as far as you need to go. Proceed, Mr. Cole.

By Mr. Cole:

Q. Now, Mr. McClintock, you are today securing your grain receipts from rail areas coming in here via rail, which are distantly located. You are getting some rail grain in here from what we call lake local territory and you are getting some grain in here ex-river, so that your grain is coming in through all those channels today, is it not?

A. That is true.

Q. Approximately 15 per cent of your grain,—I am not talking now just your company but the group you represent,—comes in here ex-river, doesn't it?

A. 15 per cent?

[fol. 2493] Q. Yes, about 15 per cent of your corn comes in here ex-river?

A. Well, I think that is about right.

Q. Less than that percentage comes in from rail-lake local territory, does it not?

A. Oh, no, I don't think so.

Q. What percentage do you think comes in from lake local territory rail?

A. A much larger proportion. If you look at the map here that we had in the exhibit yesterday, I believe it was Mr. Tannehill's exhibit number 3, and see the lines that he drew, from within those lines all that territory had lake local billing. Now, that is the territory that Chicago is most apt to draw its corn from.

Q. Well, what percentage of Chicago's receipts should come from there, do you think?

A. What percentage of them?

Q. Yes.

A. Well, I would say it might run up to 75 per cent or even higher than that, maybe 90.

Q. Then under the present conditions, under present conditions we take it, then, that 75 per cent of the grain that reaches the Chicago market reaches it from lake local territory on rail billing, is that your answer?

A. 75 per cent of the rail billing that comes into Chicago is—this is just a rough estimate, I haven't made any study [fol. 2494] of the figures whatever,—would possibly originate within that territory.

Q. That is, within your lake local territory?

A. What is that?

Q. Within lake local territory?

A. Yes, sir.

Q. And about 75 per cent of the corn that reaches the Chicago market would come from the territory——

A. I am speaking about corn.

Q. —would come from the territory of lake local billing, is that correct?

A. That is just a rough estimate.

Q. And, therefore, 75 per cent of the corn receipts in the Chicago market at the present time is being handled into this market under a condition which now does definitely limit that receipt to outbound movement via the lake only, is that correct?

A. No.

Q. Where else can it escape?

A. To local industries here in Chicago. Now, these figures that I gave you, that I read into the record here, representing 83 per cent, was the business shipped out of Chicago. It did not include the grain that the industries here such as Corn Products and American Maize and other feed manufacturers might have bought.

Q. What percentage of the annual receipts of corn would you say was consumed locally then?

[fol. 2495] A. Well, I think there is some——

Mr. Belnap: That is definitely in the record in your exhibit, isn't it?

The Witness: I think there are some definite figures on that, or rather definite, the disappearance of corn in Chicago other than what is shipped but I don't have that in mind. They are substantial.

By Mr. Cole:

Q. It is covered by your exhibit, Mr. McClintock?

A. I believe it does show the local consumption and other disposition, yes.

Mr. Belnap: And unaccounted for.

By Mr. Cole:

Q. And unaccounted for; that is that line there.

A. Now, that is corn. When you come over in corn—this is principally corn; I believe we are speaking about corn. You can see the figure amounted to thirty million bushel in 1939. It ranged all the way from 26 up to 33.

By Exam. Taylor:

Q. Million?
A. Million, yes.
Q. 33 million bushels?
A. Yes, 33 million bushels.

By Mr. Cole:

Q. In 1936, 1937, 1938 and 1939 that local consumption has amounted to better than 30 million bushels of corn annually. All of that local consumption could get in here on lake local billing from lake local origin territory and still not bother your various worries that you expressed [fol. 2496] on the record as to getting out of Chicago with billing, could it not?

A. We don't worry about anything the processor buys. He is a factor in——

Exam. Taylor: Well, Mr. McClintock, that is not responsive to the question. I am going to hold you responsive to the question. Read the question.

(Question read.)

Exam. Taylor: If you can, answer the question yes or no and then make your explanation, it will help us a lot.

The Witness: We would be relieved from any worries in regard to that volume of corn.

By Mr. Cole:

Q. When you purchase your grain, on your direct you said that at all times you purchase it on the basis of the delivery of that grain in Chicago, free on board in Chicago, is that correct?

Exam. Taylor: He said, "c.i.f."

By Mr. Cole:

Q. Or c.i.f.?
A. Are you speaking now of barge billing?
Q. Well, either barge or rail billing.
A. Well, we buy it delivered Chicago, which in the case of rail stuff means delivered in Chicago freight paid and in the case of barge billing it means the freight and the

trimming charges. The seller absorbs the transportation charges.

Q. On the lake local billing——

A. Now, just a moment.

[fol. 2497] Q. All right.

A. That does not refer to stuff that we buy at our own locations at LaSalle and places like that.

Q. And ship to yourselves?

A. And ship to ourselves.

Q. But any stuff that you buy in Chicago or buy from a person for delivery to you in Chicago is bought on the basis that the grain is to be delivered to you in Chicago free of any transportation charges, is that correct?

A. I would have to qualify that by saying "Yes" when you say free of any transportation charges as long as there is a penalty inflicted on this lake local billing inbound when it is used outbound. If we undertook to use that billing outbound then the buyer would be assessed whatever penalty is inflicted on that particlar bill between the lake local and the I. P., whatever it might be, which ranges from a cent—from half a cent up to five cents a hundred.

Q. Well, I am still getting at grain in to you and we haven't considered the poor buyer yet. You are getting it into your elevator and when you buy it do you buy that corn that comes in here on lake local or any other basis, as far as that is concerned, so that when it is delivered in your house here you have to have Chicago delivery price without any freight charges being hooked up with it at all?

A. That is right. The terms of the contract would specify [fol. 2498] whether we bought it on lake local or whatever class of billing that we bought it on.

By Exam. Taylor:

Q. And where you go back to the seller to make up the difference between the lake local and the I. P. you do not stand that additional charge, do you? You bill back on him for that.

A. When?

Q. On the price of the grain.

A. Now, that is up to Chicago?

Q. Yes.
A. That is up to Chicago.
Q. Yes.
A. If we buy it on lake local billing, then the seller is obligated to pay the lake local freight.
Q. I say, that does not come out of your pocket?
A. No, no.

Exam. Taylor: All right.
Mr. Belnap: The lake local does not come out of his pocket. That is all you are talking about.
The Witness: That is what he is talking about, the lake local.
Exam. Taylor: The difference between the lake local and the I. P.
Mr. Belnap: That is a different problem.
The Witness: If we go out, when we use that out, then [fol. 2499] there is the condition. If we attempt to use that bill that paid on the five cent local in here, if we attempt to use that bill on an outbound rail shipment, then that is the penalty.
Exam. Taylor: Yes, but that penalty is not paid by you?
A. Yes, it is.
Q. It is assessed against the shipper.
A. No, no. If I buy that grain from a shipper on a lake local basis, we will say, for example, five cent lake local basis and then I attempt to use that bill out on a rail shipment, the inbound carrier will assess me the difference between that lake local and the I. P. if I attempt to take advantage of the reshipping rate out of here.
Q. Yes, but that is not a condition in the sale. So that on this 57 cent proposition, this old 57 cents we have been talking about, any such cars that you wanted to ship out on a reshipping rate, proportional reshipping rate, isn't it bought,—the price that you pay conditioned on that shrink?
A. I think there is testimony to show that there has been—that corn has at times been bought at some discount but only in event that you buy that corn at a discount that is representative entirely of the difference between the lake local and the I. P. does the buyer have protection.
Q. Well, how often is it bought that way?
A. Not frequently under present conditions because we haven't attempted it. We realize that it is an impossible

[fol. 2500] situation for the buyer to absorb the penalty and we have used that kind of billing out on our lake local shipments—or out on our lake shipments by steamer.

Mr. Belnap: May I understand now——

Mr. Cole: I will get it straight if you will let me.

Mr. Belnap: I can do it in less words, I think.

Q. You spoke about in your direct the lake local during the season of open navigation is ordinarily sold at just the prevailing delivered basis?

A. That is true.

Q. Now, when that is so and you do use that grain to go out by rail, it is all put on you as the buyer of the grain, is it not, the penalty?

A. That is true.

Q. In any event the fellow that sold the grain to you, the contract is completed when the grain is delivered to you?

A. That is correct.

Q. You can never get back on him?

A. That is correct.

Q. But you can discount it at the time of purchase?

A. Yes, on the original purchase you can discount it in the price.

Q. And did I understand you to say that the discount hardly ever under present conditions got over half a cent a bushel?

A. That is the testimony, yes.

[fol. 2501] Q. Regardless of how much the difference was between the I. P. and the lake local situation?

A. The competitive situation determines that. Here we have processors that buy that grain. That is a competitive situation. Here is 30 million that processors buy. They create a competitive situation in this market.

By Mr. Cole:

Q. Then, Mr. McClintock, the lake local origin, it is dependent upon the rail local rate in here because of the possibility of using the grain satisfactorily as shown; that they can pay and do pay within a half a cent of the value here of any other grain that reaches this market, is that correct?

A. That is the history so far as 1939 in a general way is concerned.

Q. Now, when you get this lake local——

Mr. Belnap: Have you completed your statement?

Mr. Cole: I beg your pardon.

The Witness: But there are circumstances surrounding 1939 that make the situation just a little bit abnormal and that is due to the corn that is being held back on the farms and at interior points under the government loan program and the receipts of corn here are not in proportion to what would normally—what they would normally be considering the production that we have had in this state for the past two years and that is why the corn that the processors buy in this market is of a more competitive importance at this time than it would be when Chicago was getting [fol. 2502] larger receipts of grain.

By Mr. Cole:

Q. Well, now, as I understand it we have so far discussed two dispositions of the corn that gets in here rail on lake local. Some of it may go out on the lake during seasons of open navigation and a substantial quantity is consumed locally in the Chicago area, is that correct?

A. That is correct.

Q. Now, is there not a third escape for the corn that gets into Chicago from your lake local origins? For instance, a good many of those origins that the lake locals apply to Chicago from have through rates to destinations in Official territory. When you move out corn to any of those destinations in Official territory, from which you find there are through rates from your lake local origins, do you go back and get that lake local billing, surrender it to your outbound rail carrier and secure the benefit of the transit balance beyond Chicago?

A. If that particular billing happens to be the best we got to reach the particular destination in which we may endeavor or may sell corn or grain then that is the billing we use and the price is predicated on using the best billing that we have.

Q. Yes, I understand your price. Now, when that——

Mr. Belnap: Mr. Cole, in asking that question were you considering the through rates which are just equal to the interstate local to Chicago plus the reshipping beyond?

Mr. Cole: No, I am considering those one-factor through [fol. 2503] rates that apply——.

Mr. Belnap: Like the Battle Creek situation?

Mr. Cole: Well, that is an illustration of it but there are many more of them.

Mr. Belnap: All right.

The Witness: There is some of that billing used, or some of the lake billing can be used to the destinations.

By Mr. Cole:

Q. When that grain comes into Chicago on the lake local it pays the lake local and the producer who has sold you that grain dependent upon the Chicago price has paid that freight rate up to Chicago. When you go out there is found to be a material benefit in a number of instances where the transit balance that is still to be paid to the carrier is substantially under any of the other bases of rates out. Is that ability to use such lower transit balances considered in the way of attaching extra importance to the desire to get the lake local billing in here?

A. In the first place, your statement is incorrect that these transit balances does represent the best billing that came in here. For example, you can take Battle Creek; this is in the record. The best billing to Battle Creek is billing that originates down in Central Illinois and pays a 12 cent rate into Chicago and goes out for 7 cents and the price level that the Battle Creek buyer has to pay is predicated on whether we have a bill in our file that can get up there for 7 cents or whether we want to use a lake [fol. 2504] local bill and break it down to 7 cents by absorbing the inbound penalty that is applied to get it up to the I. P. basis, so there is no advantage so far as the Chicago dealer is concerned. In other words, you do not sell corn to Battle Creek out of here on the basis of the reshipping rate ever, so far as I know,—15 cents a hundred.

A. No, sir. If there is an origin point in Central and Southern Illinois it would have to be as much as 12 cents to get it in here, which 12 cents the producer would absorb and you would still be able to get that grain into Chicago at the Chicago level f.o.b. so it would not cost you anything you would still consider it a penalty against you, wouldn't you?

A. I consider it a penalty against me because the dealer down at Decatur or some other Central Illinois point may have accumulated billing down there that was bought on the Chicago basis against a 12 cent freight bill and, consequently, when he sold it to Battle Creek on a 7 cent balance, whereas I am compelled to make my price on a basis of whatever the balance is represented in the lake local, which varies, and in that condition I am non-competitive if someone down at Decatur or down in that locality has a bill that he can go to Battle Creek for 7 cents over Chicago.

Q. Yes, sir. When that situation comes up then even though you have secured the grain from the lake local origin territory and even where your seller, the man you bought it [fol. 2505] from, paid the freight rate into Chicago and you still bought that grain f.o.b. Chicago and you had it in your house at the Chicago price now, you would consider it a penalty because some origin further away had a balance arrangement so that he could move it out at 3 cents under the 10 cent balance that you had available, is that not correct?

A. He has got a balance and I have a balance but my balance is due to the infliction of the penalty on the inbound movement.

Q. And you refer to that as a penalty on the inbound movement because that producer would have to ship it in here from a more distant point and that producer would have to absorb more of the freight charges in the total movement than the producer would have to absorb located closer to Chicago, is that correct?

A. That is correct. So far as the producer is concerned that is a geographically inherent condition.

Q. Does the group that you represent handle substantially all of the ex-river grain that is handled in Chicago?

A. I would say substantially so although there is one house here that is located on the water that has unloading facilities and do engage in water business to some extent. I would say that the protestants here handle most of the river business.

Q. Now, you said on your direct that when you sell your grain here a rule of the Board of Trade requires you to give billing with that sale which would enable the purchaser to go to New York with that grain on a 26 cent rate,—correct?

[fol. 2506] A. Yes, sir.

Q. Now, you compute your price so that in your price there is that 26 cents to take it there, don't you?

A. Well, unfortunately, when you make a deal on a future contract you are rather insignificant when it comes to computing prices. The price is established in a public market. When you make a deal on a futures contract, why, you are not very important in establishing the price.

Q. Well, that futures contract that you have sold here at 57 cents is, as I understand it, a contract to deliver at Chicago grain for the amount of 57 cents a bushel. You do not need to transport it any place for the 57 cents, do you?

A. But there is attached to that an obligation when you effect delivery that you must furnish with the delivery of that grain billing that will take him to New York, for example, at 26 cents a hundred.

Q. And he would pay that 26 cents?

A. If he shipped it to New York, yes.

Q. In addition to the 57 cents that he paid you?

A. Yes, and the elevation charge which I mentioned this morning.

Q. Yes, sir. When you make these sales of grain you are not concerned and you do not bear the freight charges, do you? You figure your price to include those, don't you?

A. On a delivery basis I have a definite obligation and responsibility in the freight charge that if I deliver him [fol. 2507] a bill from Morris, Illinois that came in here on 5 cents he is compelled to pay the inbound penalty that is inflicted against that bill on his movement to New York and under the rules of the Board of Trade I am obliged to make that good. In other words, the rules protect the recipient of those deliveries to the extent that he is guaranteed an escape with that grain to Trunk Line territory at the proportional rates.

Q. All right. Now, suppose that the man who purchases that grain from you for May delivery, when May comes around you give him the grain and you give him the billing that entitles him to get to New York and he wants to go to New York but he sees an opportunity to ship over the lake, which is then open to navigation, so he comes to you and he says, "I don't want to pay 26 cents to go to New York. Give me that billing. I have got a lake vessel down here that I am going to ship that stuff in." Now, I assume

that in that eventuality he would only have to pay the lake charges plus the canal charges and he could move his shipment to New York, couldn't he?

A. Certainly, that is why a qualified public elevator in Illinois,—a qualified public elevator in Chicago has to be on the lake where the buyer of the grain can have that escape if he so chooses to use it.

Q. Yes. And in that eventuality he only pays the level of transportation charges applicable to the water borne traffic over the lake and over the canal and then to New York?

[fol. 2508] A. That is correct.

Q. Now, in that case what happens to that bill that you had to have behind it that would enable somebody to move a shipment of goods from Chicago over to New York on the 26 cent rate?

A. Your question, as I understand it, was premised on the basis that he took delivery of that grain in our elevator and paid us for it and we turned him over billing that would go to New York for 26 cents and then in that case he elected to go out by water? That would be the only billing that he would have so far as we were concerned and he would then cancel that billing against his lake shipment.

Q. Then he would cancel the billing that would entitle him to go out on the 26 cent rate against a shipment that moved out via ake?

A. Yes, sir.

Q. Has that happened?

A. Well, I would say yes.

Q. Does it happen very often?

A. Well, I think I can safely say "Yes." It is one of the things that happens frequently on the market.

Q. Well, why would the man take the 26 cent bill down there is it wouldn't do him any good, where he could come to you and say to you, "Well, give me some lake local billing, I will cancel it and let you keep that because this is not going to do me any good"?

[fol. 2509] A. There wouldn't be anything to keep him from it as far as that is concerned.

Q. All right, but he wouldn't be small enough to do a thing like that; it wouldn't benefit him any, would it?

A. No, he would receive no benefit.

Q. And he would be taking something away from you that would benefit you, wouldn't he?

A. Perhaps that billing, we would rather retain it and cancel lake local billing but this man that took this grain might be a New York man, he might be a Toledo man or he might be a Buffalo man. There isn't very much sentiment in the grain business that they take the opportunity to hand back privileges to one another.

Q. Mr. McClintock, when sales are made and it is determined that instead of moving goods rail the movement is to be made via the lake——

A. Will you start that over again, please?

Q. Yes. When a sale is made like that, now, and it is determined,—you learn that the purchaser is going to use the lake to get it over there, is it customary to cancel the rail billing behind that or is it customary to cancel lake local or some other billing behind it?

A. I think the whole question here involves—I was trying to answer your question on the basis that you asked it and I repeated the premise on which you based that [fol. 2510] question and that was that the man accepts the grain in your elevator, pays for it and gets himself the billing covering that shipment which I am obliged to give him.

Q. Yes, if he got the billing.

A. Yes.

Q. Yes.

A. Now, based on that premise that billing is no longer ours. It is his.

Q. That is right.

A. And he cancels that particular shipment regardless of where he goes, but if you will let me assume what you mean in this next question, that in the event that delivery is made he pays for the grain but he don't ask for the tonnages covering that grain, he is undecided yet what he is going to do.

Q. Yes.

A. He don't know whether he will move it out by lake or by rail.

Q. That is it.

A. But in event that he does elect to load it out by water we are not obligated as a public elevator to cancel 26 cent billing to New York, is that what you mean?

Q. Yes, and in that eventuality what has been the practice of the elevators?

A. In that case I would say the practice would be ovious, that if we are left a choice as to the billing that we can cancel we would cancel that which is most undesirable to us. [fol. 2511] Q. You testified at one place in your direct that Ohio grain also paid a 26 cent rate to New York and Chicago could get to New York on the rail proportional of 26 cents and there was some territory intermediate between Ohio and Chicago that had to pay correspondingly higher rates than 26 cents, dependent upon their distance from New York, is that correct?

A. That is the situation that exists so far as the rail movement is concerned as compared to the reshipping rate out of Chicago. There are intermediate points such as Indiana that are higher than the proportionals out of Chicago.

Q. And I understood that you said in the final analysis of it that didn't make much difference because everything was based uopn the Chicago price but I want to call your attention now to this point: Grain is bought by you f.o.b. Chicago and it is in Chicago and it assumes a certain market price. Take that same 57 cents future, which you bought for 56½ cents. And you can move that grain, say, to New York on a balance of 26 cents from down in Ohio. If that man purchases grain down there in Ohio he has to pay the same 26 cents to get his grain to New York, does he not?

A. Yes, that is right.

Q. And you appreciate, of course, that there is some 300 miles,—he is some 300 miles nearer New York than Chicago is, you appreciate that?

A. I accept the mileage.

Q. Would that not force down, or, rather, work as a [fol. 2512] blanket upon the ability of the Ohio man nearer to New York being able to secure any higher prices than the merchant in Chicago can get for his grain in Chicago, way out here in the west?

A. Are you comparing the farmer in Ohio with the grain dealer in Chicago?

Q. Well, I am comparing two people, one person in Ohio with grain, with a man in Chicago with grain. They are both American citizens. Whether one is a farmer and one a merchant I did not go into. They are both American citizens with corn behind them.

A. Well, then we must assume that when you are talking

about the Chicago man you are talking about the dealer in Chicago.

Q. Well, I assume so.

A. Well, I would say that the Ohio man is probably the most favored farmer in the grain belt as he is one of the few that can get the Chicago price at his original shipping point.

Q. Because of his geographical location?

A. Because of the rate structure, which, I understood you to indicate, was probably based on geographical location.

Mr. Cole: That is all. Thank you.

Exam. Taylor: Off the record.

(Discussion outside the record.)

By Mr. Cole:

Q. Mr. McClintock, you said several times that your main concern in your drive in your business is to handle as large a volume as it was possible for you to handle, is that cor-
[fol. 2513] rect?

A. That is the premise of the whole grain business.

Q. Yes, sir. Then you answered me, too, that you could always sell, except in certain exceptional circumstances which did not happen very often, you could always sell any grain that you bought on a future contract, did I understand you correct?

A. I can sell it on a futures contract. I can hedge the corn and wait.

Q. Yes, sir. Now, if you had——

Mr. Belnap: Wait a minute, he has not finished the answer.

The Witness: But there is an obligation associated with leaving that corn in that hedge for the purpose of making final disposition of that corn and that is the rate situation which I have mentioned many times.

By Mr. Cole:

Q. Yes, I understand. Now, you can always hedge any corn that you ever bought if you want to handle volume. If you hedge your grain it is an insurance against a loss on any that you might purchase. Are we safe, then, in

assuming that the drive or the thing that is the uncertain quantity and the only single uncertain quantity that the grain business has is to get that grain, is that correct?

A. To get it and be able to dispose of it, that is hooked up with the possibilities that the rate structure forces you out of the market in which you are dealing.

Q. That is understood. Now, I am not talking about [fol. 2514] rates in this branch of my examination. I am not trying to go into those at all.

A. That is the fundamental on which the possibilities to engage in that volume are founded on.

Q. What is that, the ability to get the grain?

A. The ability to get the grain and not have obstacles placed aaginst the movement at your concentration point, such as we are talking about here in Chicago.

Q. You can always hedge your grain; you can hedge every bit that you have been able to buy, is that correct?

Exam. Taylor: He has answered that once.

Mr. Belnap: Three times.

Mr. Cole: Well, I know, but he puts in something else that gets me off on the—pardon me.

The Witness: That is what I intended to do, get you right.

Q. The only uncertain angle connected with the ability of the grain firms, then, to handle the big volume is the demand that there is, then, upon the grain people to buy as much grain as possible, isn't that so?

A. We are governed in our buying activity by our selling activity. They are both complementary to one another. We do not buy grain just for the sake of bringing it into Chicago and storing it. We buy it for merchandising beyond and I repeat that the possibilities of engaging under those circumstances is definitely related to the rate structure out of the market.

[fol. 2515] Q. If you can hedge as much grain as you can buy and if that would work to insure against your purchases, then your ability to handle volume depends only upon one thing, the amount of grain that you would be able to buy delivered in Chicago at the Chicago price, would it not?

A. Mr. Cole, I don't like to be in a position of repeating circumstances. I said at the very beginning that there were two objectives that the operator of a public elevator had in mind: One was to have stocks on hand that he could

make delivery on future contracts and the other was to engage in the merchandising business beyond the location where he accumulated the grain and for the third and fourth time I repeat again that that whole situation is hooked up definitely with the rate situation that exists on the out movement out of Chicago. We could bring a million bushels of grain in here or five million bushels and put it in an elevator down here. We could carry it in in stacks or buggies or any kind of vehicle and put it in an elevator and hedge it but we could not consume—we could not consummate a final transaction on that grain which would determine whether we were making any money on it or not until we were able to dispose of that grain. If you could forget for a minute that we are in the grain business and say that we are in the same position as an automobile dealer downtown, he can fill up his warehouse with automobiles but he performs no service for himself or for the manufacturer of that product until he disposes of it into use or consump-
[fol. 2516] tion. That is our position.

Q. Mr. McClintock, the basis for my question was just this: Assuming that every single solitary bit of grain that you ever could get into a warehouse now would have the ability to use the 26 cent rate from Chicago to New York, just assume that, and you have already said several times that you could sell on futures contract every bit of all grain that you ever bought, there is always a future contract for it, and then you know that you could sell every bit of grain that you buy and you had billing there for every bit of grain that you could possibly buy, in that event would the size or volume of your business depend solely and wholly upon the amount of grain that you could buy?

A. Yes.

Q. All right.

A. To this extent: We have filled that elevator up with grain and effected delivery on it because we had it. It then becomes public storage and we have no further control of that grain, so are unable to engage in the other feature of the grain business, that is, merchandising, so long as our elevator is tied up with the corn that we have made delivery of. That is why I endeavored to impress on you that it is necessary for the operator of an elevator to have more than

one escape for the grain that he accumulates, more than one possibility of disposing of it.

Q. Now, with that thought that you have just gone into in mind and the thing definitely in our mind as to what it [fol. 2517] takes to increase your volume, that is, the ability to buy the grain, I want to ask you if we are correct in this now: You get all your grain in Chicago at the Chicago delivered price. Formerly, before this water transportation began, these farmers around in the territory in Illinois were securing a price limited at their station, at their farm every farmer and dealer dependent on the Chicago price less the railroad freight charges into the Chicago area. Do you recall that testimony, is that correct so far?

A. No, I do not. I recall that there was some witnesses testified that when corn was on that basis, on an all rail basis into Chicago, and where only the I. P. rate was in effect that they were able to get considerable of that corn.

Q. Who were able to get considerable?

A. Indianapolis and Decatur, I believe, were the two witnesses that testified that the present rate structure including the lake locals and the barge rates into Chicago prevented them from acquiring business in the Illinois valley because it was coming into Chicago.

Q. Then the farmer in the rail origin territory before the water transportation began was able to secure a price dependent upon either the rail transportation cost to Chicago or the rail transportation cost to some other market, whichever rail transportation cost happened to be lower, is that correct?

A. Certainly. The price which a farmer gets for his grain is always—the cost of transportation is always involved and [fol. 2518] the character and degree thereof and the greater the degree of the transportation cost at his market he gets correspondingly less.

Q. Now, I think on your direct you also stated that if you used the ex-river grain to Chicago for this escape over the lake and if because of that situation you used less of the lake local corn from the lake local corn area that probably that lake local value back in the origin territory would drop, do you remember that, because it wasn't in sufficient demand here.

A. Yes, that is correct.

Q. Then you also at another point on your direct said that when the lake local corn could not get into the Chicago

market, when the demand for that lessened, and when more grain was handled on the waterways, when this increasing quantity came up the waterway, that the taking away of this water grain lessened the territory which these other markets reached into, which threw those demands of those other markets into this lake local territory and that would increase the price paid to the origins in the lake local territory, do you remember that?

A. I don't remember it. When I made that statement I was referring to the territory removed from the river.

Q. Yes.

A. And I said that probably if we can rely on the testimony as submitted here by Mr. Bradford and the gentleman from Decatur that they were crowded out of the Illinois River by virtue of the fact of the price level being raised [fol. 2519] at the points of origin due to the cheap rate into Chicago, that the only way they could get back into this territory would be to have the price level lowered at the point of production based on the measured distance in transportation cost.

Q. Now, it is, of course, definite that both of these things could not happen at the same time and, in your judgment, which do you think would happen?

A. I want to disagree with you that they could not both happen, if I understand what you meant by "they could not both happen."

Q. Well, here is the thing: At one place there was the theory that the increasing movement via the barge lines had decreased the area that other markets had been getting into, that it deprived them of their ability to get grain in that area because the grain was coming to Chicago. Then you said that if you handle all of the ex-barge grain over the lake it would probably lessen your demand for the lake local billing. Then in another place you said that the lake local billing area because of these facts would make your grain less available to the farmer. Then when you talked about the taking away of that other through rate to those other markets you said they would be forced into this same market, with that drop in consequence of Chicago.

A. I think I understand what you mean.

Q. It is a round circle, isn't it?

A. That is right and you ask me what I think will happen?

[fol. 2520] Q. Yes.

A. What I think will happen is in event that we lose the,—the protestants lose the reshipping privileges out of Chicago on barge billing will be this that there will be less demand for lake local corn on account of having to employ the lake for the use of our barge billing corn and the effect will be that corn on the lake local instead of selling at a half a cent or in some cases no penalty will sell at the full discount or near it, depending on volume.

Q. In Chicago?

A. In Chicago, and in that case a part of the boys that are on the side favoring discontinuing these rates will be affected because it will do the very thing that the Indianapolis dealer said it would, it will throw it back to a level where the Indianapolis man can come in and take that grain and take it away from Chicago and it will affect the merchant in Chicago, the receiver, it will affect the Board of Trade as a unit in decreasing the volume. It will affect the merchants in Chicago from the angle of the shipper and it will hurt the fel-ow back removed from the river because he is again engaged in a competitive situation from a territory that he had formerly been away from. Does that make it clear?

Q. Yes, I understand you exactly. In other words, your position is that if this change is made the change will definitely hurt not the shippers along the river but decidedly [fol. 2521] the shippers of rail grain?

A. I did not exclude the protestants who have equipment down on the river, in the elevators on the river. If we are confined to the escape out of here by lake,—we have gone over it many times,—we have only a seven months possibility.

Q. I understand that. During that seven months, though, there won't be any trouble.

Mr. Macaulay: Go ahead and proceed on that question.

Mr. Cole: Wait a minute. Why should he proceed on that question? He has answered it.

Mr. Macaulay: I don't think he has answered it fully, Mr. Cole.

Mr. Cole: I am satisfied with the answer so far.

The Witness: I think it has all been covered.

Mr. Macaulay: All right.

Mr. Cole: I think that cleans up my notes. Thank you.

Exam. Taylor: Recess five minutes.

(Whereupon a short recess was had.)

Exam. Taylor: Proceed. Mr. Garrison, do you want to make a statement on the record?

Mr. Garrison: The exhibits or records to be furnished by the Central Inspection Bureau, four complete copies will be ready for mailing tomorrow morning. The other six copies will be available by tomorrow a week, that is, the last of next week and the Inspection Bureau would like to have [fol. 2522] the parties to whom we should mail these documents.

Exam. Taylor: You want their addresses?

Mr. Garrison: Yes, I want the parties and their address.

Exam. Taylor: All right, I will get it right now. Can you take them or do you want their cards?

Mr. Garrison: Yes, their cards will be all right.

Exam. Taylor: If you have your cards, gentlemen, pass them over to Mr. Garrison. Now, off the record a second.

(Discussion outside the record.)

Exam. Taylor: All right. Now, Mr. Day?

Mr. Day: No questions.

Exam. Taylor: Mr. Enoch?

By Mr. Enoch:

Q. Mr. McClintock, referring to the contract between Continental and the Cooperative Allied Grain Dealers Corporation, which you mentioned on your direct, that contract, I believe, is dated May 13, 1939.

A. I believe along about that time. I don't have the exact date in mind.

Q. Does it contain the following provisions which I will now enumerate? That you will acquire the land, build an elevator equipped to operate for the handling of grain, to be sold to the Allied under arrangements whereby the Allied at the end of the five year period will reimburse you for all expenses incurred of every kind and nature and also four and a half per cent interest on the money outlay until it is paid back?

[fol. 2523] A. Well, I can't recall whether your citations there were the exact words or not but in principle that was the agreement, the nature of the agreement. I testified yesterday I was not sure whether the rate of interest was four or four and a half but I would answer "Yes" to your question in that it is my recollection that those stipulations were set forth in the agreement.

Q. Does it further provide that immediately upon completion of the elevator and its readiness for operation that possession shall be delivered to the Allied and held by it subject to the terms of the agreement for a period of five years from the date of delivery of possession?

A. I would answer yes.

Q. In reference to the payment by Allied to Continental of the purchase price does it provide that the Allied shall set aside and later pay over to Continental a half a cent a bushel for each bushel of grain handled through the elevator?

A. That is correct.

Q. Does it further provide that the amount so paid by Allied to Continental shall first be applied to the payment of interest on the purchase price and the balance of such payments to be applied on account of the purchase price?

A. That is correct.

Q. Does it further provide that in case such purchase price and interest shall not have been paid in full at or prior to the expiration of the five year period then the deed and [fol. 2524] possession of the elevator shall immediately upon the expiration of the five year period be returned to Continental for cancellation?

A. I believe that provision is in there.

Q. Does it further provide that the Allied agrees to sell all grain delivered to said elevator during the period of five years from the date of delivery of the elevator to Allied and irrespective as to whether the purchase price shall have been paid in full prior to the expiration of said five year period to Continental all rail bids for grain submitted by Continental to Allied and that Continental agrees to purchase from Allied all of said grain in accordance with such bid price?

A. Would you repeat the last two lines there?

Q. And does it further provide that Continental agrees to purchase from Allied all of such grain in accordance with such bid price?

A. That is correct.

Q. Does it further provide an undertaking on the part of Allied not to sell or dispose of any grain delivered to said elevator to any other person, firm or corporation whatsoever but to sell all of such grain exclusively to Continental?

A. So far as the contract is concerned that is correct.

Q. Does it further provide that in case at the expiration of said five year period from the date of delivery of said elevator to Allied the payments made by Allied on account of the purchase price shall not be sufficient to pay such pur-
[fol. 2525] chase price and interest in full then all right, title and interest of Allied in and to said land, elevator, and so forth, shall cease and terminate upon the expiration of said period of five years and that possession of said elevator and all appurtenances shall be at once delivered to Continental and the payments made by Allied on account of such purchase price shall be retained by Continental and be deemed to be rental paid for said property during said period?

A. That is correct.

Q. Is it further provided therein that in case the Allied shall make default in any payment or violate any of the provisions of the agreement and any such default shall continue for a period of ten days then Continental may, at its sole option and election, terminate the agreement and Allied thereupon at once will deliver and surrender possession to Continental and Continental to have the right to retain any and all payments theretofore made under the agreement as rental up to the termination?

A. It is my recollection that that is so stipulated.

Mr. Belnap: Mr. Examiner, I did not object, nor did I intend to object to the evidence with regard to the contract on the ground of immateriality and so, consequently, I am not entitled to ask this question, but if Mr. Enoch cares to do so I would like to know from him as to what he conceives to be the significance of the terms of that contract or materiality to any issue pending in this proceeding?

[fol. 2526] Mr. Enoch: Well, may I answer that at the conclusion of the cross examination?

Mr. Belnap: I only ask it so I may know what phase of this case has got to be covered by brief. I don't want you to disclose anything to the witness before you answer.

Mr. Enoch: Oh, no, that is not the point at all.

Q. Now, Mr. McClintock, the Continental has been in business a long time, hasn't it?

A. Yes, sir.

Q. And the Norris Grain Company?

A. A very long time.

Q. How did it get along in the merchandising of grain prior to the receipts of corn—will you strike that, please? How did they get along in the merchandising of corn prior to the receipts of that grain by barge from Illinois River points?

A. Will you read the question?

(Question read.)

A. My answer to that, Mr. Enoch, would be that they did then just as they are endeavoring to do now, is to take every advantage that the Chicago market offers as a gateway to market corn and any limitations that they were confronted with would be the same then as it is now, the question of rate structure out of the market.

Q. Were they subject to any limitations that other competitors of theirs located at Chicago were not subject to, [fol. 2527] generally speaking?

A. I wouldn't say so.

Q. Now, if you get away from this water borne corn and this truck corn and take the situation prior to the time those influences were prevalent, all of these merchandisers located at Chicago were on a parity, were they not, so far as the general domestic consuming territories are concerned?

A. Yes, I would say so.

Q. Does the Continental make a greater profit per bushel in merchandising corn received from Illinois River points by barge than it does on corn received by rail?

A. No, sir. I think I stated that we based the price that we paid for the river corn on the Chicago value of the grain. I went into that and explained that on our bids to people like the Allied that we based the price we paid them on the value of other corn in Chicago.

Q. I want to be sure that you understood my question. Now, I am talking about the price,—about the profit in the merchandising of corn and I want to know if you make a greater profit?

A. Well, the profit from merchandising corn is based on the differences you can obtain between your buying price and selling price and we have made no distinction as to the value of barge grain as relates to the value of other grain carrying the same transit privileges.

Q. Well, as I understood your answer it was "No", that [fol. 2528] you do not make any greater profit per bushel in handling barge grain than you do rail grain?

A. That is correct.

Q. Now, why do you engage in this business of handling all of this tremendous amount of corn from Illinois River points exbarge to Chicago?

A. Well, I think that is all in the evidence here. We could rely on our competitors, the testimony of our competitors. We look upon it as a means of increasing the volume of corn into Chicago. If you wanted to go into quite a lengthy discussion of that, which I hope we can avoid, if you look upon the record of Chicago receipts in the past ten years compared to the previous ten years you will see that there has been a general decline in the grain that has come to this market and it was to overcome that situation in whatever degree possible by using any method that might tend to increase volume into this market and through this market and I think the records definitely disclose that they have been a factor in increasing the volume of this corn. That is substantiated by the testimony of the gentleman from Indianapolis and Decatur, where they stated that they were formerly able to participate in acquiring corn at other markets but since the situation that now exists they were no longer able to, so it just seems to me that it is all very plain that it is a means of increasing the volume of corn to this market and that is what we are interested in.

[fol. 2529] Q. How about 1929 compared with 1939?

A. Well, I haven't got any definite figures in my mind and one year would not be a fair comparison because there are crop situations that would affect that condition one year compared with another but the average situation is the one that concerns us.

Q. All right. Now, take the ten year period 1920 to 1930 versus the period from 1930 to date: Do you think on the average you are getting more corn in the latter period than you did in the former? I am talking about receipts.

A. I would say we are not getting as much. I do not pretend that this river business has overcome the loss that we have sustained here in the last ten years, I make no contention of that, but that don't keep us from trying to get back as close to that level as possible.

Q. Well, is your point that—take the five year period prior to 1935 and compare that annual average with the annual average in the subsequent period,—that the lat-er will be greater than the former?

A. The years from 1930 to 1935 compared to 1935 to 1940?

Q. Yes, would be less in the former period than in the lat-er?

A. Not within those two periods. In each of those two periods we had a drought condition. Now, as a matter of fact, the effects of that drought condition both lean toward the last five years because the drought was in 1935 [fol. 2530] but that affected—the drought was in 1934 but that affected the movement into Chicago in 1935, so I would not say again that that was a fair comparison.

Q. Well, how do you arrive at the conclusion?

A. My conclusion is on my own examination of the facts of the past ten years compared with the preceding ten years.

Q. Now, your testimony is that you cannot get enough rail grain in Chicago and in order to pep up your volume you went down the river?

A. That is my testimony and I repeat that it has been the means of increasing our business to Chicago and increasing the volume of the Chicago market.

Q. All right. Now, to the extent that your volume of business has been increased, to the same extent someone's else volume has been reduced and that must be somone else outside of Chicago, is that true?

A. Mr. Enoch, I am here representing the protestants in this case and we are interested in this case as it affects us and our business through Chicago.

Q. Yes, but is my statement correct that to the extent that your business has increased someone's else business would diminish?

A. I wouldn't be in position to say. I don't know.

Q. Well, you don't claim that any more,—speaking solely of domestic corn, domestic consumption,—any more corn was consumed since this river transportation began than prior thereto?

[fol. 2531] A. Well, when you speak of this,—when you confine yourself to domestic consumption that don't answer the question because we are engaged in both the export and domestic picture and so far as the domestic I would not attempt to say that it has necessarily increased or decreased it but I am quite positive that it has been the means of increasing the volume of business that worked through the Chicago market for export.

Q. All right. Now, I understand that you are not certain that the business you do to domestic consuming territories has been increased by reason of this Illinois waterway transportation to Chicago?

A. I am speaking only from the position of the protestants in this case and I am not qualified to answer but it might have affected the total domestic consumption of corn in areas that we operate in.

Q. You cannot say the same thing for the corn which you sold to domestic consumers as you say for the corn you sold in export anyway?

A. That is true and I consider the amount of corn that can be worked for export and the effects thereof so far as the general public and the producer is concerned is a very important consideration.

Q. Now, how sure are you that this water borne grain from the Illinois River points to Chicago had any effect whatever on the amount of corn that you sold in the export market?

[fol. 2532] A. I recited a specific instances in the movement of export business out of here right now. I stated that we would have been unable to participate in that business had we not had the reshipping privilege out of here on barge corn, barge grain.

Q. Well, now, just how sure are you of that?

A. I am sure enough that I am willing to testify to it under oath that that is the case.

Q. I am not questioning your statement so far as the facts are concerned but I am just wondering if in that connection you gave consideration to the influence of your efforts because of your ability to sell this corn at a certain price on the price that your competitor was offering to sell it and whether or not you had given consideration to the fact that if you had not put in such a bid that was lower than his, whether his would have been as low as it was, the one that you had to meet?

A. I never said that we put in a low bid or made a bid based on a low quotation. That is, if you are assuming that, why, I would not be certain of it.

Q. Now, isn't there much more corn moving to New Orleans for export than has come up the river from Illinois points to Chicago that has gone into the export market?

A. You mean at present?

Q. Say in 1939?

A. There has been considerable corn worked through New Orleans for export.

[fol. 2533] Q. Yes. And it has been quite substantial, it has been in substantially greater quantities than the volume of corn that has come up the river from Illinois points to Chicago during 1939?

A. I wouldn't say it has been substantially greater. I doubt whether it has been as great or not.

A. Yes.

Q. That there has not been more than 12 million bushels of corn exported out of New Orleans in 1939, if that is the amount that has come up the river here from Illinois points to Chicago?

A. If the total business that was done through New Orleans is greater than the amount of corn moved in here up the river the answer and the comparison would be obvious. I don't know what the business has been out of New Orleans. I do know, however, that considerable of that business that moved to New Orleans came off the Illinois River.

Q. And it was wholly uninterrupted and would have been in existence even though these proportional rates were not applied on this ex-barge corn out of Chicago that did come up the Illinois River?

A. So far as that particular corn that was shipped via the lower Illinois River is concerned, yes, and it is likely that the volume between New Orleans would have been increased and that we who own elevators on the upper Illinois River, too, have sent out corn to New Orleans instead of bringing it to Chicago and having it available to ship [fol. 2534] out of here by rail this winter.

Q. This 97 million figure, this 97 million bushel figure that you gave in your direct testimony, can you tell me how much of that was corn?

A. No, I can't tell you. It is all grain.

Q. Can you give me an approximation?

A. I would say that a very large per cent of it was corn.

Q. A large per cent of it was corn?

A. A large per cent was corn.

Q. And you cannot,—or can you break that down further by telling me how much of it was export and how much of it domestic?

A. No, I don't think I could right here, right now.

Q. Can you give me an approximation of that?

A. We ship quite a little of this corn to Montreal, some of it to Georgian Bay ports and thence to West St. John and Halifax and some through Buffalo but I wouldn't have the figures in mind but there was a substantial portion that went for export.

Q. Would it be 75-25, export 75?

A. I don't care to make any estimate on it. It was quite substantial. As a matter of fact, I would not be in position to testify so far as the other fellows were concerned. That is business of a private nature that they would not want to be disclosed.

Q. Well, the amount of corn, for instance, that has been exported in 1939, isn't that a matter of public information?

[fol. 2535] A. The matter of export is public business but who exports it is not entirely public.

Q. Your position is that this difference between the present cost of getting Illinois River corn to Cincinnati, Ohio, for instance, between the river-rail cost and the all rail cost is to the benefit not only of the producer but of the consumer?

A. I think I stated yesterday where rates were—so far as rates were concerned that if a producer was located in a section where the contract market such as Chicago affects and is important in fixing the price of his corn at that location, that the adjustment in freight up and down affects the producer when that adjustment is made up to the contract market and if the adjustment is made beyond the market then it affects the consumer.

Q. You don't think the through charge is of significance as far as the consumer is concerned but he is only interested in the charge from the rate break market, for instance?

A. That is quite largely so. You take the export rate, for example, 16 cents out of here: That did not change the farmer's down in the Illinois Valley position very much because he still had a 9½ or a 12 cent I. P. rate into Chicago.

Q. Have you sold more grain in the State of Ohio, for example, since this Illinois River corn came into Chicago than you did prior thereto?

A. No, I don't think so.

Q. Have you sold more in Indiana?

[fol. 2536] A. No, I don't think so.

Q. Or in Pennsylvania?

Mr. Belnap: Mr. Enoch, are you talking of one year's business related to another or one particular area as compared with another?

Mr. Enoch: You heard my question.

Mr. Belnap: You said, "Have you sold more"? In relation to what?

Mr. Enoch: More since Illinois corn began moving up the river than prior thereto.

Q. Pennsylvania?

A. We don't make any contention that ex-water corn, whether it is ex-river or ex-lake, has any advantage into C. F. A. territory. As a matter of fact, it has a disadvantage. It takes the higher application of the reshipping rate.

Q. Have you sold more to New York? I am talking about domestic.

A. I made the general statement that it was our thought that we were able to bring more corn through the Chicago gateway by virtue of having the inbound river movement and the reshipping rate out than we would have handled if we did not have that situation.

Q. Where did you place that excess?

A. Well, it goes to the general consuming territory that we can reach out here. We sold corn in Indiana, we sold corn to the Ohio River and we sold corn to these other des- [fol. 2537] tinations that you talked about but we didn't do it necessarily because we had barge billing.

Q. You do not claim to have increased your volume of domestic business because of the barge billing?

A. Not into those particular territories.

Q. To what territory do you claim that, do you make that claim?

A. Into Trunk Line territory, into New England, and New England is one of the very large consuming areas for grain out of the surplus producing sections.

Q. Who lost that business that you got?

A. I am not sure whether anybody did or not. I couldn't say.

Q. Do you think that this ex-barge Illinois River grain had something to do with increasing the consumption of corn?

A. I believe I stated that so far as domestic business is concerned that I was not on record and did not care to go

on record to the effect that it increased the domestic consumption of corn but it does increase the possibilities of us engaging in that business.

Q. Now, you mean to a greater extent?

A. That is true.

Q. From whom do you take the business?

A. That is what we are here for, to maintain that situation.

Q. From whom do you take the business?

A. I don't know whether we take it from anybody or not.

Q. Don't you have to take it from anybody if the con-
[fol. 2538] sumption is not increased and you increase your volume?

Exam. Taylor: Don't you have to take it from somebody?

By Mr. Enoch:

Q. Don't you have to take it from someone, yes?

A. No. That may be the circumstances, that somebody else would have got the business if we had not gotten it so far as the domestic business is concerned, but who it was and the location it was from——

Q. I did not mean to identify the person.

A. Or the territory, that depends on crop conditions.

Q. Does the grain produced by the Indiana and Ohio farmer get into Eastern Trunk Line and New England territories, do you know?

A. Yes, at times it does.

Q. Were you able to increase your business in Trunk Line and New England territory since the ex-river grain came onto the Chicago market by reason of the fact that you could sell it more cheaply to those consumers in those territories than you did theretofore?

A. We do not base our selling price on what the other fellow is willing to sell for. Our price is based on the cost of our grain plus whatever the transportation cost is into the territory that we are operating in and there is no circumstance in this case that the application of barge grain would permit us to get from Chicago to New England territory any cheaper than we would if the grain had come in by rail.

Q. How did you increase your business if you did not
[fol. 2539] offer it at a lesser price than your competitor was offering it at?

A. If you assume that any of these protestants has to sell cheaper than anyone else to participate in the grain business you are mistaken on that premise.

Q. Don't you?

A. The grain business is not done on that basis.

Q. Don't you sell this Illinois corn more cheaply because——

A. There may be times that we are able to sell the grain into New England cheaper than the dealer in Ohio is able to sell it but it is not by virtue of any fact that is associated with the difference in what the corn may have cost up to Chicago. Ohio and Indiana, you know, are not the large producing sections that we have here in Illinois. Now, that competitive situation exists over there; based on crop conditions being normal that competitive situation so far as Chicago is concerned is quite pronounced during the early part of the season following the harvest of the corn.

Q. Can't you sell ex-river corn more cheaply than a man who is located at Chicago can sell rail corn in Eastern Trunk Line and New England territory?

A. With the inflictions that you have on the inbound billing here, on the rail billing, I would say that that particular shipper is at a disadvantage.

Q. Is that because of the lake local?

A. It is because of the lake local,—it is the infliction of [fol. 2540] the penalty that that lake local billing has on an outbound movement.

Q. All right. Now, suppose the lake local wasn't there, wouldn't you still be in a position to sell corn more cheaply than the Chicago man who purchases rail corn?

A. No, sir.

Q. Don't you buy it more cheaply than he does?

A. No, sir.

Q. You don't?

A. No, sir. I think I told you that a while ago.

Q. Yes. Your contention is that the entire spread between the rail cost and the water cost you give over to the producer?

A. I said that so far as the elevator is concerned that we operated on the river ourselves it was operated on the basis of what Chicago corn it worth — Chicago less the transportation charges and less the amount necessary to operate the elevator at LaSalle, plus an amount that would depre-

ciate that house in a reasonable time and a return on the investment. Now, outside of those factors the producer gets the benefit.

Q. Now, do you pay the producer any more than you have to to make him let go of his corn?

A. We don't know what the producer has to have to make him move his corn.

Q. No, that is not my question. Do you pay him any more than you have to to make him let go of the corn?

[fol. 2541] A. The grain business is handled on a margin where a quarter of a cent a bushel is the difference and I know that we have at times paid in the LaSalle area a cent and three-quarters, two cents, two and a quarter more than he would have obtained on rail corn and we would not have had to pay it merely from a competitive situation.

Q. You are saying now that the entire difference between the rail cost and the water cost goes to the producer, that you make no more in merchandising a bushel of corn that you receive ex-water than you do on that received ex-rail and that you do not reduce the prices in the consuming territory. Now, in those circumstances will you tell me how you are able to increase your volume of sales to Trunk Line and New England territory?

A. It is because of the fact that the territory from which we gather most of the corn along the river that comes into Chicago has these lake local rates. They may be there by virtue of the fact that there is a river movement in operation, I don't know about that, you best know, but it is a fact and that billing I am telling you cannot be used for rail shipments out of here and it cannot be used for delivery on contracts and what else can a man do in the grain business if he cannot do those two things?

Q. All right. Now, you are saying, "Take out the lake local, then everything will be free and you will all be on a competitive basis"?

A. No, not as far as Chicago is concerned because there [fol. 2542] were witnesses in here that testified that the means that we are using to get corn in here into Chicago now kept it away from them.

Q. You mean by that that you won't get as much corn into Chicago?

A. I do. I mean that.

Q. Now, mind you, I am just taking out the lake local now. Do you say that will follow if you take out the lake local?

A. I say that that is what is likely to happen and, as testified by witnesses in here on your side of the case which, of course, does paint a peculiar picture that we would have our own Chicago market interested in conditions that are beneficial to the Indianapolis and Decatur dealer but that is what they testified to and I believe it.

Q. Now, your testimony is that take out the lake local, so far as all of the merchandisers located at Chicago are concerned, not only those that purchase ex-river grain but those that confine their operations to ex-rail grain, they are all on a parity insofar as selling in Trunk Line and New England territories are concerned?

A. These dealers in Chicago but that does not take care of the situation that is competitive with other markets. That is based on volume.

Q. And you would continue to allow the producer the entire difference between the rail cost and the water cost?

A. I would see no particular reason for changing the condition that I just mentioned.

[fol. 2543] Q. Well, would you change it if——

A. Well, your question in effect is that—your inference is that——

Q. I am not making any inference.

A. —we are conducting the elevators down there and just sniping on the rail boys, isn't that it?

Q. No, I am just assuming that you are continuing this business.

A. That is what you think we are doing.

Q. That you are out to make a profit for your stockholders and if you are out to make a profit for your stockholders I don't know what right you have to pay anybody for corn more than he was willing to sell it to you for. That is all I mean.

A. I have no way of determining what that man is willing to sell the corn for.

Q. Mr. McClintock, if you went down and offered him 20 cents a bushel and you kept on raising him up a cent until you get to the point at which he is willing to sell it for that will tell you what he is willing to sell it for.

A. Do you think it is possible to engage in the grain business on that basis?

Q. It is one way of loosening up the corn.

A. It would be a good way to go broke right quick.

Q. I am not saying that you are sniping these fellows at all. I don't want you to draw that conclusion.

A. A comparative case to that would be for the Rock [fol. 2544] Island to find out what it took to move the corn for down there and start in reducing the rates and cutting them down from 26 cents from here to Chicago and finally getting it down to 5.

Q. That wouod be greater worries for us. The cheaper you would get it the more money you would lose.

A. Well, based on that premise you would have to do that.

Q. Is there an elevator operator at Rochelle, Illinois?

A. I would say yes. I don't know.

Q. Do you think he is benefited by this arrangement that is in effect now on the water?

A. Well, if he lives close enough to the river,—I don't have the locations in my mind,—but if he lives close enough to the river to participate in the activity I would say he would benefit.

Q. I understood you to say that all these producers were benefited by this, am I right?

A. All of what producers?

Q. All of the Illinois producers, in answer to Mr. Cole's questions.

A. I answered specific questions when I referred to a particular instance.

Q. But you think the operator at Rochelle, the elevator operator is not hurt?

A. I am sure of it.

Q. And the producers in that territory which he serves, [fol. 2545] they are not hurt either?

A. That is my conviction.

Q. But you have increased your business in the consuming territories in Eastern Trunk Line and New England territories?

A. Mr. Enoch, I think the protestants in this case are capable of merchandising a great deal more corn than is now coming through the Chicago gateway with all the com-

petitive modes of transportation and we can do it without hurting anyone.

Q. What was your testimony on direct about the transfer service performed, if any, by the Continental at the South Chicago elevator?

A. The public tariff is a cent and a quarter a bushel.

Q. Do you engage in that business? Did you in the year 1939, for any outsiders?

A. Well, we have—I wouldn't just be able to say whether we have. I think we have. I think we transferred some wheat that came up from the Southwest that was transferred for shipment out of here.

Q. When was that?

A. Well, it was probably during the season following the movement of new wheat down there. I couldn't tell you exactly.

Q. Do you know whether it happened in 1939?

A. Yes, I am quite positive we did do some business in 1939.

Q. Has there been any wheat come up the river that went onto the Chicago market? Now, if that is not phrased [fol. 2546] right, what I am trying to distinguish between is the wheat that is brought in here as this corn has been brought in that went on the Chicago market or the wheat which came up the Illinois River say from Kansas City or some other point, if there are any other points, and was merely transferred and went on to Buffalo or some other destination.

A. There was wheat that came,—by barge you mean?

Q. Yes.

A. There was wheat that came up here from Kansas City by barge and transferred for reshipment out.

Q. And was all of the wheat that came up the river handled that way?

A. I am not sure whether—are you speaking still of the Kansas City wheat?

Q. Yes.

A. I think perhaps all the wheat that came up here from Kansas City was transferred here and shipped beyond. I think most of that was reshipped out of here by lake. We did not handle any of that particular volume ourselves that came in by barge but I understand most of it went out by lake but some of it did go out by rail.

Q. Yes, for such merchandisers as millers and general mills that owned the wheat bought direct, in their course of transportation through Chicago to Buffalo, for instance.

A. Well, I am not just in position to say whether they [fol. 2547] bought the wheat in Kansas City and undertook to transport it themselves or whether the elevator operator who may have sold the wheat performed that service.

Q. Do you store barge grain in your elevator for any other—any competitor of yours?

A. Barge grain?

Q. Yes.

A. I don't believe we have ever stored any barge grain.

Q. For some competitor?

A. I don't recall that we have ever done that.

Q. Do you know whether Norris & Company does?

A. I don't know whether they have or have not. I know some of the protestants have. I know that the Santa Fe Elevator Company did and I know that they were somewhat affected by the threat of losing this barge reshipping billing out of here.

Q. Is there any merchandiser in Chicago that now engages to any extent in the merchandising of this river grain that does not have facilities along the river?

A. He is in the same position that I would say that the Chicago merchant is when he engages in consuming markets beyond the Buffalo or Georgian Bay ports. We then use the public elevator facilities or the elevator facilities at those points to make our transfer from water to rail and there is that possibility here in Chicago where the dealer in some inland town down here, if he wanted to, or some [fol. 2548] individual in this market that wanted to engage in the handling of that business could go down here on the river and accumulate that corn, buy it competitively from the same people that we do and the public facilities here are available to him for the transfers.

Mr. Enoch: May I have the question read to Mr. McClintock?

Exam. Taylor: Yes.

(Question read.)

The Witness: Well, I wouldn't say that there is anyone that engages in it extensively. However, the possibility for him to do so exists.

By Mr. Enoch:

Q. Well, can he do it and compete with you, for instance, or anybody situated as the Continental is?

A. Well, the only expense that he is placed to is the elevation charge for the transfer of that grain and I think there has been some experience in the Chicago market recently where it would have been cheaper to have paid that transfer than try to operate the elevator.

Q. Well, I say do any merchandisers here in Chicago engage in the merchandising of this ex-river grain that do not have facilities along the river?

Mr. Belnap: Mr. Enoch by that do you mean does any elevator company in Chicago buy that grain who does not have elevators which they operate themselves on the river banks?

Mr. Enoch: Can you answer that question?

Mr. Belnap: Is that what you have asked him?

[fol. 2549] Mr. Enoch: No, that is not exactly it.

Q. Answer Mr. Belnap's question, please.

A. If you mean extensively I would say no, they do not.

Q. Now, a man located in Indianapolis, Toledo or on the Ohio River, he is in the same situation, isn't he?

A. He is in the same situation that I agree that the facilities are here available for him, public facilities and if there is an advantage that Mr. Bradford and some others have stated that there was here, he has only got to add a cent and a quarter a bushel to that advantage and he can move his grain right from the river right up to Chicago, right down to his place of business and the only thing that he will have to absorb above the transportation costs is a cent and a quarter elevation and the inspection and weighing charge.

Q. Why doesn't he take advantage of that?

A. Well, he does buy grain out of here. Now, it is a question—you know, this cent and a quarter that we charge for elevation is a profit in the grain business. Now, maybe he can buy the grain from us or from Norris or from some of these other competitors in here at a price level that repre-

sents that cent and a quarter and maybe since he feels he is removed from the market he would prefer to do that.

Q. And compete with you. You are in position to sell grain to the same fellow that he is going to?

A. Oh, well, there is a lot of people that buy grain that [fol. 2550] don't sell it. We are not in the manufacturing business. You know, the largest consumers of grain so far as grain merchants in Chicago are concerned is the fellow that buys that grain and makes it into a manufactured product.

Q. Let me ask you this: Do the grain merchants in Indianapolis, Louisville, Cincinnati and similar points take advantage of this situation to which you refer in Chicago and avail themselves of ex-river grain?

A. They have not so far as I know.

By Exam. Taylor:

Q. Well, isn't your house a public house?

A. Yes, sir.

Q. If they bought the grain, if Mr. Bradford's people in Indianapolis bought the grain on the river and shipped it up to your house, paid the transportation charges up there, you would store it for them?

A. Absolutely.

Q. And you would charge them a cent and a quarter?

A. That is right.

Q. Now, if they could buy from you without paying that, without being charged that cent and a quarter or from somebody else without being charged that cent and a quarter it would be foolish, wouldn't it?

A. That is correct.

Q. Because you have already stated that sometimes a quarter of a cent a bushel will make the trade?

[fol. 2551] A. That is correct, but, Mr. Examiner, just to make clear the position of Mr. Bradford here that the Indianapolis man was prejudiced under this present condition, we say that he could not possibly be hurt more than the cent and a quarter a bushel elevation cost because he can use the same channels of transportation that we can use by paying the transfer fee here.

By Mr. Enoch:

Q. Who are the two largest merchandisers of this ex-river grain?

A. I don't have any figures that would determine that.

Q. Let me ask you this: Do Continental and Norris Grain Company handle by far the larger proportion of the ex-river grain?

A. I don't have any figures on what any individual of these protestants may have handled. I know that we handle considerable and I know Norris did. I know that Cargill bought considerable grain on the river and I explained that Rosenbaum Bros.' house that had the marine leg was disabled through the fire and that they were not in operation during most of the summer season and probably did not participate in the business to the extent they otherwise would. I know that they——

Q. Did they participate in it to any extent?

A. This year, just based on those——

Exam. Taylor: This year? 1939?

The Witness: 1939, that they did not engage in it very extensively. Whether they engaged in it at all I am not able to say.

[fol. 2552] By Mr. Enoch:

Q. Did Cargill have any ex-river corn in 1939 from Illinois River points now, I mean LaSalle?

A. Well, he didn't have any from LaSalle but it is my understanding that he had some from Peru. I think it was testified to here and I think it is in the evidence that some corn loaded over in Peru went to Cargill's elevator and I happen to know through information that I had in trade connections that Cargill bought quite considerable corn along the Illinois River.

Q. Now, what do you mean, in 1939?

A. In 1939.

Q. How much? When you say "quite considerable" what figure are we to understand you intend to convey there?

A. It would only be an estimate. Why make a guess on something that I have no definite knowledge of at all? I don't know.

Q. You mentioned Dewey Grain Company doing business on the river. Isn't it a fact that they sell to you or to the Norris Grain Company at the river landing?

A. I think maybe the trade might be made both ways. It might be made f.o.b. the locations where the grain was delivered or it might be all delivered. I know the grain

that we bought, especially where it came via the Hennepin Canal, it was all delivered at Chicago, c.i.f. Chicago. He furnished his own transportation. That is, he furnished his own means of transportation.

Q. How about the Terminal Grain Company that you mentioned?

[fol. 2553] A. The Terminal Grain Company? I just don't recall it. I think it was either all bought on a Chicago basis or part of it on an f. o. b. basis less these charges, whatever it involved.

Q. You mentioned the Barry Transportation Company. You didn't have any transportation of corn by the Barry Transportation Company in 1939 from Illinois?

A. I don't believe we did.

Q. Haven't you used Mechling exclusively in 1939?

A. No.

Q. John I. Hay?

A. Hay hauled most of the corn that we ourselves bought at our own locations so far as the Chicago movement is concerned.

Q. Yes, that is what I am talking about.

A. Yes.

Q. You think Hay brought it?

A. Yes, quite a little of it. I am talking about corn now that originated at our stations that we own and operate ourselves.

Q. Yes. Isn't it true that the criticism you make of this rate adjustment out of Chicago, namely, a local rate and a proportional rate, so far as its being—strike that out. Isn't it true that this criticism you make of the proposal as being a penalty against ex-river grain is to the same extent and in the same degree a penalty against truck grain coming to Chicago?

A. I don't believe I ever testified anything regarding truck grain.

[fol. 2554] Q. Well, let me ask you about the truck movement. Do you think truck grain ought to have the same rate of—strike that out. Do you think truck grain ought to have the same rate out of Chicago that ex-river grain has?

A. I have never given it much thought. So far as rate making is concerned I recognize there is a justification in rate differentials similar to the degree of the service performed. If the time ever comes when the volume of grain coming into Chicago by truck is of any clarge proportion

that the railroads might want to give consideration to a rate to carry it out of here, it can be considered then. Now, I am not attempting to answer whether it should have or should not have. Mr. E. R. Bacon here and Rosenbaum Bros., I believe, are the elevators that are participating in that business more than any others and they are both protestants in this case, not founded on the basis that it affects their truck business at all.

Q. Well, you have made out the best case that you could make out here for the application of the proportional rate on ex-river grain. Now, couldn't you make out and with equal enthusiasm the same identical case if the question were up as to whether or not the proportional rates should be applied on truck grain?

A. Not very this late in the day. It is not a question that I would care to make an answer on.

Exam. Taylor: Mr. Enoch, what was that 85 per cent figure you read out of an exhibit over there moved by Mechling?

[fol. 2555] Mr. Enoch: That was not an exhibit. That was off the record, too, Mr. Taylor. That was not an exhibit, the figure I have.

Exam. Taylor: What was said about that? Maybe it ought to be on the record.

The Witness: It has no relation to this.

Mr. Enoch: 85 per cent of the corn came in—this is not an exhibit—came in from,—this is Illinois corn that was handled by the Allied Barge and the Mechling Transportation Company.

Exam. Taylor: It is not an exhibit?

Mr. Enoch: No.

Exam. Taylor: Are you going to put it in?

Mr. Enoch: I can put it in.

Exam. Taylor: Have you seen that?

Mr. Belnap: Sure.

Exam. Taylor: Would you like to read it in the record?

Mr. Enoch: Yes, I would. Have you any objection?

Mr. Belnap: Why don't you wait, Mr. Enoch? You have some other matters to put in and I will then be willing to accept Mr. Enoch's statement as a statement of fact.

The Witness: Just a minute.

Exam. Taylor: This is off the record.

(Discussion outside the record.)

Exam. Taylor: Let us take a short recess while you all [fol. 2556] agree on that.

(Whereupon a short recess was had.)

Exam. Taylor: Proceed.

By Mr. Enoch:

Q. Mr. McClintock, what would you say to the cancellation of the eastbound local rate and making the present proportional rate applicable on ex-river grain the local rate?

A. You mean make the proportional on rail shipments, too, on the basis of the local rate?

Q. Take this one rate out of Chicago to New York, Baltimore, Cincinnati, Detroit. Have just one rate out of Chicago, I mean.

A. It would depend on the level of the rate and how it compared with other gateways.

Q. Well, take the present rate.

Mr. Belnap: Now, Mr. Examiner, I haven't asked this witness anything about rate construction, simply the way rates have operated on merchandising.

Mr. Enoch: From a merchandising standpoint.

Mr. Belnap: Now, if the witness can answer from a merchandising standpoint how a given rate will operate, that, of course, is what I talked to him about.

The Witness: Well, he will first have to state the rate.

By Mr. Enoch:

Q. Make the present proportional rate the local rate.

Mr. Belnap: Give him a figure.

The Witness: Well, I would say that if the present pro- [fol. 2557] portional rate could be used as the local rate that it would be quite satisfactory so long as that relation maintained with other gateways, that there were no advantage through the other gateways.

Mr. Brown: What would you say with respect to the rate adjustment from the country points, which is where you start with your competition?

The Witness: I answered that question on the assumption that present rates inbound would remain in effect.

Mr. Enoch: That is all I have.

Exam. Taylor: Are you going to put that other exhibit in later?

Mr. Belnap: He is going to make a statement of fact as counsel.

Mr. Enoch: Do you want it in now?

Mr. Belnap: Wait until we get Mr. McClintock off the stand.

Exam. Taylor: Mr. Brown?

Mr. Brown: No questions.

Exam. Taylor: I have a few before redirect.

Q. Mr. McClintock, is this true, that grain moving on local rates is discounted in price to the extent of the difference between the lake locals and the I. P. rates?

A. Now?

Q. Yes.

A. It is not.

[fol. 2558] Q. Would it be under the proposal?

A. It is my opinion that that is the condition that would develop because the volume of grain that now comes in here by river would be forced out through the avenue, which would be the lake, that is now employed to use as an escape for the whole lake local billing.

Q. Then if that transpired how would you buy that grain? Would it be discounted?

A. There are two modes in buying in which that purpose would be accomplished. If the lake local rates still remained in effect and we bought it at a discount then we would have to go through the trouble of asking the seller who might be offering us grain—the receiver who might be offering us grain, we would have to go to the trouble of ascertaining the exact station from which that particular car arrived so that we could determine what that differential was. There is a variable differential in these lake local rates.

Q. It would range from two to——

A. From a half a cent a hundred to five cents a hundred.

Q. Yes.

A. Now, naturally, in that case your discounts would vary, but what we would more probably do, instead of making them a bid on the lake local we would make our bid predicated on the shipper absorbing the I. P. rate and we would bid on an I. P. basis.

Mr. Brown: But the effect would be the same.

[fol. 2559] The Witness: The effect would be exactly the

same, only it would simplify the tranaction by disregarding that there was lake local.

By Exam. Taylor:

Q. Then you would have the discount in your price, wouldn't you?

A. That would be the—we would have the discount in the price when we bought it on the lake local billing at a price representing the freight differential between the two classes of rates.

Q. Now, I believe you mentioned the fact that you had just completed an elevator at Seneca on the river?

A. Along during October, this elevator that is covered by this contract here.

Q. Oh, is that this contract Mr. Enoch was talking about?

A. That is right and that is the elevator we built and sold under contract to the Allied Grain Corporation. We at the same time built this elevator at LaSalle and it was completed and started into operation about the first of October of 1939.

Q. That is at LaSalle?

A. At LaSalle.

Q. But is there any such contract in connection with that?

A. No. We own that house outright.

Q. Are there any other contracts of a similar nature between your company and any down the river elevator people?

A. No.

[fol. 2560] Q. Now, there is just one further question or possibly two that I would like to ask. Does Continental Grain Company own or have any interest in any elevator located at Buffalo or adjacent lower lake port?

A. The Continental Grain Company has no interest in any elevator at any of the l--ger lake ports. When those gateways are utilized we utilize them as through the facilities offered as a public operation. We operate an elevator at Toledo under lease but it is not on the water.

Q. I see. Well, does the Continental own or have any interest in any transportation facility over the Great Lakes?

A. No, they do not.

Exam. Taylor: Redirect?

The Witness: Or into the Chicago market, we have no interest in any of the barge lines.

Exam. Taylor: Well, I meant over the Great Lakes generally.

The Witness: No, we do not.

Exam. Taylor: Redirect. Oh, just before you do that, Mr. Enoch's statement as to the contract, which you agreed upon as to the terms, makes unnecessary your request that the contract be read into the record as a whole. That is correct?

Mr. Enoch: Yes, that is correct.

Mr. Belnap: Mr. Enoch was going to tell me something at the conclusion of his cross-examination.

[fol. 2561] Mr. Enoch: Mr. Belnap, I did not know about the existence of that contract until it came out in the testimony of one of the prior witnesses here and after such description was given of that contract as shown by the record my only interest in it was to find out whether or not there was any provision in there by which on the compliance with the terms of which there was any possibility of beating the application of lawful rates.

Mr. Belnap: Did you read from a copy that you had and ask Mr. McClintock about that provision there for the purpose of assuring yourself that there was no such provision?

Mr. Enoch: I haven't come to any conclusion about it.

Mr. Belnap: I am still in the dark, Mr. Examiner. As I now understand Mr. Enoch's purpose was to discover whether the contractual provisions provided a method for defeating the lawfully established rates. That was the only purpose for which you were interested in the contract, is that right?

Mr. Enoch: That is right.

Mr. Belnap: And you haven't made a sufficient study of the contract and the law to come to any conclusion about it?

Mr. Enoch: That is right.

Mr. Belnap: I only ask so that I might know about the issues of the case.

Mr. Enoch: Well, now that we are on that very subject perhaps you will tell me whether or not you differ with some of the other witnesses on whether or not this grain is [fol. 2562] located in these elevators in Chicago is between the time when it is unloaded out of a barge and just before it is re-loaded for outbound transportation in transit?

Mr. Belnap: It is in transit in the sense that it must comply with the terms of the transit tariff in order to obtain

the benefit of the outbound reshipping proportional rates. It certainly is not in transit in the sense that it is an uninterrupted through journey under rates from the first origin to final destination subject to the Commission's jurisdiction.

Mr. Enoch: In other words, it has not moved over a through route from Morris or Dwight through Chicago to final destination?

Mr. Belnap: Subject to the Commission's jurisdiction it has not.

Exam. Taylor: That is merely a statement of position.

Mr. Enoch: Yes.

Mr. Belnap: I also think it is the fact, Mr. Examiner.

Exam. Taylor: Well, it is your contention. Proceed now with your redirect.

Mr. Belnap: I think I just have one question—one subject.

Redirect examination.

By Mr. Belnap:

Q. You were asked about the escapes for corn which has been delivered in Chicago on the basis of the lake locals, particularly as to movement beyond on transit balances [fol. 2563] of through rates. Take the situation, Mr. McClintock, where the through rate is exactly the equivalent of the I. P. to Chicago plus the then reshipping rate beyond, in that case if the grain moved in on an I. P. rating the transit balance would be precisely the same as the reshipping rate, would it not?

A. Where the factors that—where the through rate was made up on factors of the reshipping plus inbound?

Q. Yes.

A. Then the transit balance in that case would be the same as the reshipping.

Q. Precisely.

A. That is true.

Q. Now, the lake locals are always less than the inbound I. P., are they not?

A. Yes.

Q. So as to any grain which would come in on a lake local the transit balance under the through rate in the situation I have given you would always be in excess of the reshipping rate?

A. Now, let's see if I follow you on that; the transit rate would be less than the reshipping rate, is that the way you stated it?

Q. No. I say the transit balance would be in excess of the reshipping rate. Let us take some figures. Let us take a point that has got a 12 cent I P. to Chicago, the reshipping rate is 15 cents and the single factor through rate is 27 cents. Now, if the grain moved in on the 12 cents rate the [fol. 2564] transit balance would be——

A. The same.

Q. —15 cents and the reshipping rate would be 15 cents?

A. That is quite true.

Q. Now, let us say we have a lake local rate of possibly 8 cents: It is always less than the 12, is it not?

A. It would be higher outbound corresponding to the difference inbound between the lake local——

Q. By "higher" you mean that the transit balance would be higher than the reshipping?

A. The transit balance would be higher than the reshipping rate to the destination to the extent that it was cheaper inbound as between the lake local and the I. P.

Q. And that could be applied to all situations of a similar character, could it not?

A. That is true.

Q. Now, in the case where the joint through rate is less than the combination of the interstate factors to and from Chicago you then, as you do at Battle Creek, obtain a transit balance less than the reshipping rate?

A. That is true.

Q. But isn't it also true that the transit balance you then obtain is higher than the transit balance using the interstate factor to Chicago by the precise difference between that interstate factor and the lake local?

[fol. 2565] A. It is higher to the same relation that exists between the lake local and the I. P. into Chicago.

Q. To the extent of the difference——

A. In other words, in simplification there, it matters not whether we go out on that transit balance or whether we pay the inbound carrier the I. P. basis and go out on the reshipping difference. The result is precisely the same.

Q. And it is that difference that you referred to as the blight against the lake local billing?

A. Absolutely.

Q. Now, taking the——

Mr. Brown: Why don't you finish that? Suppose the local rate from Chicago to that destination is only 3 cents above the reshipping rate and the balance inbound as between the I. P. and the lake local is 4 cents what would he do?

The Witness: Will you state that again, Mr. Brown?

Mr. Brown: Suppose the local rate is only 3 cents higher from Chicago than the reshipping rate to this eastern C.F.A. destination what would you do with the lake local then, where the rate inbound 4 cents—where the rate inbound was 4? You would not pay more than that local rate, would you?

The Witness: No.

By Mr. Belnap:

Q. So far as grain sold for city consumption is concerned, as shown on this exhibit, does that mean that the grain is actually consumed in the sense of being either [fol. 2566] fed to animals or eaten by humans in Chicago?

A. No. That corn or that grain, if you are speaking of corn——

Q. Yes, corn.

A. —is quite largely used by industries such as the Corn Products, American Maize and other similar industries and feed manufacturers and is employed for conversion into such products as those manufacturers might be making.

Q. Those products are grain products of which a great volume is moved beyond Chicago, is that correct?

A. That is my understanding, that a large percentage of the business is moved beyond Chicago for consumption.

Q. When you sell corn to a local processor you transfer to them the inbound billing?

A. Well, I think it might be mentioned here that most of this corn that is consumed by these local industries is not bought from Chicago elevators. It is bought in competition with the Chicago elevators in the spot market and to arrive, just the same as we do. So far as acquiring their supplies are concerned they engage in the same mannerism of bidding that the elevators do. Now, we do sometimes well grain out of our elevators to these local industries but it is not practical for them to depend on Chicago elevators as their source of supply on account of there is a cross-town switch involved which naturally adds to the cost of their grain.

Q. When you do sell do you transfer to the local processor [fol. 2567] the inbound billing?

A. No. Ordinarily we sell them on the kind of billing that we are going to furnish as agreed upon at the time of sale.

Q. Whatever it is you transfer to them inbound billing?

A. We transfer the title of that billing to them and it is then in their possession, if it is going to Corn Products, and the title is registered in the name of the Corn Products.

Q. And there are the same problems as to having billing that will go beyond, different perhaps in degree, as you have in connection with the shipment of grain?

A. That is true.

Mr. Belnap: That is all.

Exam. Taylor: Mr. Macaulay?

By Mr. Maculay:

Q. You made a statement as to what you thought would be the condition in the event that reshipping rates are taken away from barge grain. Did you state that with relation to your operation at LaSalle or with relation to all river elevators?

A. Well, I had in mind when I made the answer as to the effect it would have on elevators operated or owned by the Chicago protestants. I probably had in mind more than anything else the elevators operated by the Continental Grain Company and my answer was predicated on that feature. Now, what might happen to the independent elevators operated independent of Chicago connections I could not say definitely what would become of them, of [fol. 2568] course. It was my assumption that whatever suffering took place that they would suffer in the same degree, or in a greater degree than the Chicago elevator operator because if it comes to a question and you are limited as to the amount of volume that you can handle I think it would be human nature to look out for your own elevator first and to that extent I think the elevators operated by the Allied and Mr. Finnegan would probably suffer to a greater degree than elevators operated by the Chicago protestants.

Q. One more question: In exhibits 19 and 38 furnished by the Board of Trade there is a considerable movement of wheat, a considerable amount of wheat movement to Chi-

cago via the Illinois waterways. Do you know whether or not all of that wheat came from Kansas City?

A. Well, there was a little wheat originated on the Illinois River that came into Chicago. My recollection is the most of it did come from Kansas City, practically all of it.

Q. Some did come from other points on the Illinois waterway?

A. Yes, some. There is very little wheat produced up in the upper regions of the Illinois River, such as La Salle. You don't get into the wheat territory until you get into Peoria and farther down the river.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: That is all.

Exam. Taylor: Anything on recross?

[fol. 2569] Recross examination.

By Mr. Cole:

Q. Mr. McClintock, going back to this grain that gets into Chicago on the lake local or from the lake local territory that is able to move out on a transit balance, there are times, are there not, and situations where the arrival of that grain in Chicago, considering the amount of money which was paid by the seller, has been such that that billing does enable you to go out on a transit balance which is then less than the proportional rate to your destination?

A. I think that is in evidence here.

Q. Well, anything you just recently answered to Mr. Belnap did not change that prior statement, did it, or the effect of it or the results of it?

A. I don't recall that I answered him anything different, that I answered him in any different manner than that.

Q. Now, on your exhibit number 82 there is shown quite a volume of corn which each year is city consumption and unaccounted for. When that grain moves and there is surrendered on that outbound movement, whether it is corn or whether it is products of corn, and there is surrendered on that any billing showing the inbound grain that matched up against that, would that grain be in a group which was known as city consumption and unaccounted for or would it be in here showing the disposition of it?

A. If it moved out as grain? Now, let's see if I get you. Off the record.

[fol. 2570] Mr. Cole: Yes, off the record, if you want to, to get ourselves straightened out.

(Discussion outside the record.)

Mr. Cole: That is all I have. Thank you.

Mr. Belnap: No further questions.

Exam. Taylor: Is that all from this witness? Witness excused.

(Witness excused.)

COLLOQUY

Exam. Taylor: Now, Mr. Enoch, have you got a statement to make?

Mr. Belnap: I might state before Mr. Enoch starts by saying that he can state certain information in the record without being called as a witness. We can have the statement of counsel that it is a fact and I will be glad to agree to that.

Exam. Taylor: State in the record what the information is.

Mr. Enoch: This is Illinois corn moving to Chicago, Illinois via barge lines and recorded for transit privileges during the year 1939. I might say that all of these figures are compiled from the documents that are surrendered at Chicago to support the outbound movement of this barge grain.

Exam. Taylor: Recorded with the Central Inspection Bureau?

Mr. Enoch: Yes.

Barge Line.	*Weight in Pounds.*	*No. of Trips.*
Allied Barge Corp.	244,060,544	174
John I. Hay Co.	77,328,450	39

[fol. 2571]

Lawrence Transportation Co.	3,294,850	7
Myers Transportation Co.	459,810	1
A. L. Mechling Barge Line	407,576,180	371
Waterways Transportation, Inc.	598,070	1
Totals	733,317,914	593

Number of cars based on an average weight of 95,000 pounds per car, 7,719 cars and the total number of bushels represented by the total weight in pounds are 13,094,962.

Mr. Belnap: That is a calculation based on the pounds you have read into the record?

Mr. Enoch: That is right, 56 pounds to the bushel. Now, Mr. Belnap's remarks just prior to my reading these figures also included, as I understand it, two letters which I have from the Illinois Commerce Commission inquiring as to certain facts insofar as the records of the Illinois Commerce Commission are concerned relating to the barge lines that are shown in the statement which has just been read. I understand that I am permitted to read these two letters into the record. This is a letter directed to me, dated January 13, 1940 from Joseph E. Knight, Secretary, Illinois Commerce Commission, Springfield, Illinois:

"DEAR SIR:

In reply to your letter of the 6th relative to your inquiry about the A. L. Mechling Barge Line and others we would [fol. 2572] advise that there have been no applications filed with the Commission in these cases.

Also, our records further show that no rates, charges, rules or regulations have been filed with our rate section, no stocks or bonds approved and no reports filed in accounting section."

Another letter from and to the same people dated Springfield, Illinois, dated January 17, 1940, reads as follows, the writer being Secretary of the Illinois Commerce Commission:

"In reply to your letter of the 6th instant relative to your inquiry about Lawrence Transportation Company; Myers Transportation Company; and Waterways Transportation Company, Inc., we would advise there have been no applications filed with the Commission by these companies.

Also, our records further show that no rates, charges, rules or regulations have been filed with our rate section, no stocks or bonds approved and no reports filed in our accounting section by the three above named companies."

I might say that my letter originally mentioned in addition to the A. L. Mechling Barge Line the John I. Hay Com-

pany and Central Barge Company. Now, if there is any doubt about whether the Interstate Commerce Commission takes judicial notice of the statutes of the State of Illinois I want to introduce the Illinois Public Utilities act.

Mr. Belnap: I will agree that the Commission may take [fol. 2573] judicial notice of the statutes, so far as I am concerned.

Exam. Taylor: That is sufficient.

Mr. Enoch: That is all I have.

Exam. Taylor: Now, Mr. Belnap, did you have the tariff references yet?

Mr. Belnap: Yes. May that statement be indexed as a statement of the counsel, Mr. Enoch, so that we can identify it as a statement of facts?

Exam. Taylor: Yes.

Mr. Belnap: Mr. Examiner, I would like to supply some tariff information for the record with the I. C. C. citations and in some cases to read into the record tariff items and have them presented the same way as a statement of counsel which may be accepted as a statement of fact in the case.

Exam. Taylor: Proceed.

Mr. Belnap: If there is no objection to that.

Exam. Taylor: I hear no objection.

Mr. Belnap: The Western Transit Tariff number to which Mr. Rich referred on his direct examination is L. E. Kipp's 331-F, I. C. C. No. A-3102 effective 12/1/39.

Exam. Taylor: Proceed.

Mr. Belnap: Now, Mr. Examiner, when Mr. Garrison was testifying he, speaking from recollection, stated that Rule 5 would be incorporated in Agent Jones' Freight tariff No. 535, I. C. C. No. 2790, effective June 28, 1935—or, [fol. 2574] rather, as it was incorporated in that tariff was a reproduction simply of a note which had been in a great many carriers' tariffs prior to that date. Since that testimony was given I have examined some of the prior issues of the individual lines and I find that his statement that was based on recollection was not entirely correct. For example, the Michigan Central had individual issues prior to the Jones' tariff. You will recall that Rule 5 in the Jones' tariff had two paragraphs, the first making an affirmative provision and the second paragraph excepting certain traffic from that affirmative provision. It would be just

as easy if I made reference to them as the first and second paragraph. The Michigan Central tariff that contained——

Mr. Day: What is that tariff?

Mr. Belnap: It is I. C. C. 5882, did contain for a period running back, how far I do not know, the first paragraph.

Exam. Taylor: What is the effective date of that tariff?

Mr. Belnap: I am going to put it in, when the change came in. However, it was not until Supplement No. 22, effective March 15, 1933, that the exception was placed in the tariff.

Mr. Day: What is that supplement again?

Mr. Belnap: 22 to I. C. C. 5882, the citation then reading:

"The foregoing will not apply in connection with any rates carrying provision that such rates are applicable on ex-river or ex-lake traffic (Inf. 14388.)" I understand that has reference to a C.F.A. information circular dealing with [fol. 2575] rules that are put in tariffs. For the Pennsylvania Railroad it was not until March 1st, 1933 in its tariff 73-A, I. C. C. 573, Supplement 33 thereto, that any rule at all similar to the Rule 5 in the Jones' tariff was made a part of their rate tariff. They published both paragraphs at that time.

Exam. Taylor: What is the I. C. C. number of that tariff?

Mr. Belnap: I. C. C. 573. The New York Central tariff which carried the proportional reshipping rates prior to the time they were taken over by the Jones' tariff was its tariff No. 643-A, I. C. C.-L. S. No. 1470. I have before me Supplement 127 of that tariff which was issued on June 28, 1935, effective July 31, 1935. That is after the period the Jones' tariff took out of the tariff the proportional rates but I find on page 7 thereof the rule regarding the application of proportional rates which refers to the same C.F.A. information circular but happens to carry only the first paragraph and not the second paragraph. A search has been made of the New York Central tariffs, individual issues carrying these proportional reshipping rates prior to the date of the agency issue and we have been unable to discover where they had at any time the exception of the character finally published in the Jones' tariff.

Exam. Taylor: It had the first paragraph?

Mr. Belnap: The first paragraph only but not the exception. For the C. & O. in its tariff I. C. C. No. 11656, effective April 15, 1937, has the provision regarding the application

[fol. 2576] of proportional rates, the first paragraph of which was taken from prior issues but the second paragraph, the one which bears, "The foregoing not to affect," and so forth, was added at that time. When the agency issue was——

Mr. Day: That was effective April 15, 1937?

Mr. Belnap: That is the supplement I am reading from. It shows it carried from a—that is from Supplement 36 of that tariff.

Mr. Day: Off the record.

(Discussion outside the record.)

Mr. Belnap: I took what I said as to what is in the tariff from the supplement I referred to, which was effective on April 15, 1937. The note in question carries a reference mark "9", which shows that the preceding change, that is, the time when the second paragraph was added, was February 28, 1935. That was in Supplement 9 to the tariff. I would like to read in the record, Mr. Examiner, the note with which we are concerned as taken from Freight Tariff No. 535, Jones' I. C. C. No. 27900, effective on June 28, 1935. On page 100 of the tariff is found a provision which is given in a note or rule numbering headed, "Application of proportional rates." "Proportional rates, as named herein, which by their terms are limited in their application to traffic originating at, specified points or territories, including rates which are published for application on traffic "from beyond", or "when destined beyond", are applicable only [fol. 2577] when the entire through movement is performed by rail carriers or water-and-rail carriers, under rates lawfully on file with the Interstate Commerce Commission; the foregoing not to affect any rates now published carrying provisions that such rates are applicable on ex-river or ex-lake traffic." Now, Item 5 in the present agency tariff has already been read into the record.

Exam. Taylor: Yes.

Mr. Belnap: I only call attention to the fact that since the first publication of that rule the words, "Ex-ocean" have been added in the second paragraph thereof.

Exam. Taylor: When was that done?

Mr. Belnap: I haven't the tariff reference for that. It shows in parentheses in connection with this publication "C.F.A. Information 21, Line 11," but I do not know the

date. Now, Mr. Examiner, no mention has been made on the record of the fact that a somewhat similar rule is carried in the Jones' 245 Series, the present issue being I. C. C. No. 3356.

Mr. Brown: That is in.

Mr. Belnap: Did Mr. Brown put it in?

Mr. Brown: Yes.

Mr. Belnap: Perhaps so. Anyway, I have examined the earlier issues of that tariff to find when the rule was first made effective. In Supplement No. 6 to the tariff, effective February 7, 1935, on page 2 was published the first para-
[fol. 2578] graph to become effective January 15, 1935. The effective date was the effective date of the supplement except as otherwise noted therein and the first paragraph carried a special provision making it effective on that earlier date. Then the publishing agent came along in Supplement No. 67, effective on February 15, 1935 and under special permission No. 141560 of February 9, 1935, on two days' notice added the second paragraph to the rule, the one reading, "The foregoing not to affect", but effective on January 15, 1935, the same date. Now, the present exception is different from the one as originally established only that in the second paragraph it has as the last phrase, "or on traffic forwarded via ocean from the port."

Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Belnap: I would like to offer exhibit 82 into the record.

Exam. Taylor: It will be received.

(Exhibit 82, Witness McClintock, received in evidence.)

Mr. Belnap: Now, I have a request to make that is in the nature of a statement of facts that I want to appear in the record.

Mr. Enoch: I would like to have a copy of the Illinois Public Utilities act identified as exhibit number 83 and received.

Exam. Taylor: Exhibit 83 is received.

[fol. 2579] (Exhibit 83 received in evidence.)

Mr. Belnap: Mr. Examiner, when Mr. Tannehill presented his exhibit 1 and showed as to C. F. A. territory the rules governing the application of rates prior to the publication of the agency issue on behalf of all lines he took

the New York Central as representative and there has been some question since that time raised as to whether or not there was difference in language in any of the individual issues and I would like to request that Mr. Cole supply for the record within a time that he may suggest the provisions insofar as Chicago are concerned providing for the application of the reshipping rates, the Trans-Mississippi proportional and the Northwest proportional to C. F. A. territory for the lines for whom I read into the record the provisions relating to the application of proportional rates and, in addition, for the Wabash, the B. & O. and the Nickel Plate.

Mr. Cole: What other railroads were there, Mr. Belnap, besides B. & O., Wabash and Nickel Plate?

Mr. Belnap: I gave a tariff reference for the C. & O., Pennsylvania and Michigan Central as far as the rule governing the application of rates is concerned.

Mr. Day: You did not mention Nickel Plate, did you?

Mr. Cole: No, I did not hear him.

Mr. Day: You did not name any Nickel Plate tariff.

Mr. Belnap: No. I said those carriers and in addition. And for the B. & O., the Wabash and the Nickel Plate I [fol. 2580] would like to have the same statement show the date on which the general tariff provision regarding application of proportional rates which I just read from other individual lines' issues first became effective, separately as to the first paragraph thereof and the second paragraph thereof, if they were in those individual tariffs and became effective on different dates.

Exam. Taylor: Mr. Cole, agrees,—are you agreeable to furnishing that information?

Mr. Cole: Yes, I think we will agree.

Exam. Taylor: Will ten days be sufficient?

Mr. Cole: I believe so.

Exam. Taylor: Ten days for that.

Mr. Day: Why do you exclude other roads, Mr. Belnap?

Mr. Belnap: Well, I only did because Mr. Cole said, "Don't ask me for a lot" and I just picked out the names on my check that quick. I would be perfectly willing to have it supplemented and have an unlimited number if Mr. Cole wants to, but I discussed this with him before I asked him for it and he said, "Don't make too many roads."

Mr. Cole: Mr. Belnap, if in our securing of this same information that you wanted for those roads, if we find that it is quite possible and easy for us to get additional roads, you have no objection to our adding the additional roads in there?

Mr. Belnap: I have no objection to adding the additional roads and so far as the information that I read from the [fol. 2581] tariffs, if anything should be found in any part which is incorrect I would like to have it correct on this statement.

Mr. Cole: Is it understood that if we have difficulty getting the past history of the tariff of the individual roads that I will write to Mr. Belnap about that, as to that particular road?

Mr. Day: Do you want the Michigan Central? We will undertake to get it. The Pennsylvania, B. & O. and the New York Central are here.

Exam. Taylor: But you are pretty sure that you can furnish that in ten days?

Mr. Cole: Yes.

Mr. Belnap: Why don't you take twenty and be sure?

Exam. Taylor: You have got to have it in ten days before the brief date.

Mr. Belnap: Well, that will be ten days before.

Exam. Taylor: Make it fifteen days. We will split the difference. Is that all now?

Mr. Day: If your Honor please, I would like permission to offer in connection with these tariff provisions a copy of Information Circular 14388. I don't know what it contains but it is referred to in these tariffs and it seems to me it might have some information.

Mr. Belnap: That will be satisfactory to me.

Exam. Taylor: All right.

[fol. 2582] Mr. Belnap: And then what about Information Circular No. 21911?

Exam. Taylor: That will be fifteen days in like manner, Mr. Day.

Mr. Belnap: It is understood that the information that I have asked for similar to that contained in Mr. Tannehill's exhibit number 1 insofar as the individual lines is concerned is simply the rules as they were in effect immediately preceding the Jones' agency issue except as to that

general rule regarding the application of proportional rates and then I want to know as to that when it first became effective.

Exam. Taylor: Is that all?

Mr. Belnap: Yes.

Exam. Taylor: Is this a correct statement of the agreement that was reached off the record? A proposed report is requested by all parties and because of this request respondents agree to voluntarily postpone the schedules under suspension pending determination of the issues here considered.

Mr. Day: I don't have any objection to it.

Mr. Belnap: That is the way I understand the understanding.

Exam. Taylor: Any objection to that statement?

Mr. Cole: We have none.

Exam. Taylor: Mr. Brown?

Mr. Brown: I did not agree to it but if the respondents [fols. 2583-3652] and the protestants agree to it I, of course, will not offer any objection.

Exam. Taylor: The free copies of this record for respondents will go to Mr. Cole and for protestants to Mr. Belnap.

Mr. Cole: When is the brief date?

Exam. Taylor: It will be 30 days.

Mr. Cole: In the event the Commission does not issue a proposed report, as we understand will be done now, or as we have requested at least, we do ask that the case be assigned for oral argument.

Mr. Belnap: What did you say that brief date will be? Would you just as soon make it February 27th, which will be on a Tuesday?

Exam. Taylor: All right, make it February 27th. If that is all, the hearing in I. & S. 4718, Grain Proportionals Ex-Barge to Official Territory, is closed.

(At 4:55 o'clock p. m., January 26, 1946, hearing closed.)

[fol. 3653] In District Court of the United States, Northern District of Illinois, Eastern Division

No. 3714. Consolidated Cases

Cargill, Incorporated, et al., Plaintiffs,

v.

United States of America, Defendant

No. 3725

Inland Waterways Corporation, Plaintiff,

v.

United States of America, Defendant

Findings of Fact and Conclusions of Law—April 16, 1942

This cause coming on to be heard and the Court having heard arguments of counsel, and being fully advised in the premises, now makes the following

Findings of Fact

(1) Presently, and for many years, trunk line railroads operating to the east from Chicago, Illinois, including the carrier defendants herein, have maintained therefrom to eastern destinations proportional or re-shipping rates on grain and grain products (hereinafter referred to as grain), in carloads, which are and were lower than the local rates on the same commodities from and to the same points. As a representative example, to New York City, New York, the proportional or reshipping rate is 26 cents per hundred pounds and the local rate is 34.5 per hundred pounds. To destinations east of Buffalo and Pittsburgh the trunk line railroads maintain similar rates, although differing in amounts, all of said rates exhibiting a similar difference of 8.5 cents per hundred pounds between the proportional or reshipping rates, on the one hand, and local rates, on the other. Such proportional or reshipping rates apply upon reshipment from Chicago to grain received at Chicago over any route via a rail or a water transportation line from any origin, from whence the inbound interstate rate

via railroad is 8.5 cents per hundred pounds or greater, provided the reshipment takes place within a year after [fol. 3654] the grain is received at Chicago, and further provided that the billing of the inbound carriers, which is treated as representative of the grain, is recorded with the railroads and is cancelled at the time the grain represented thereby is reshipped. To destinations to the east of Chicago and intermediate to Chicago and Pittsburgh, proportional and reshipping rates lower than local rates are and were also provided. However, to such destinations there were and are three different levels of proportional or reshipping rates, one termed Trans-Mississippi, another Northwest, and another Reshipping. As to grain received at Chicago via rail and reshipped therefrom to said destinations, the application of the Trans-Mississippi, the Northwest, or the Reshipping Proportional or reshipping rate is dependent upon the origin from whence grain moved inbound to Chicago via rail. As to grain received at Chicago via a water transportation line, the Northwest proportional or reshipping rate is applicable, regardless of the origin and regardless of the route of the inbound movement. The local rates of the eastern trunk lines from Chicago to eastern destinations apply on all grain shipped via rail to which the proportional or reshipping rates above described do not by their terms apply.

(2) Grain presently entitled to the proportional or reshipping rates arrives at Chicago via three different characters of transportation services, *i. e.*, (1) via rail; (2) via barge over the Illinois River and connecting waterways and rivers; and (3) via lake steamer over the Great Lakes. The terms "ex-rail," "ex-barge," and "ex-lake," are used as referring to grain received via the respective means just stated, and also to grain that is reshipped upon the cancellation of the ex-rail, ex-barge, and ex-lake inbound billing.

(3) Little or no grain moves into and out of Chicago in continuous through movement. Rather, the inbound service via rail, via barge, or via lake steamer comes to an end by delivery of the grain into an elevator at Chicago, title to the grain commonly passing to a purchaser at that point, and the outbound reshipment comes later as an independent transaction.

[fol. 3655] (4) The Inland Waterways Corporation, operating the Federal Barge Lines, plaintiff in No. 3725, operates a barge line as a common carrier by water in Interstate Commerce on the Illinois waterways and the Mississippi and Missouri Rivers, and has heretofore transported ex-barge grain to Chicago, which ex-barge grain has been reshipped therefrom at the proportional or reshipping rates above described.

(5) Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, plaintiffs in No. 3714, each operates a general grain business and public elevators at Chicago. In the course of that business, they buy grain received via rail, via barge, and via lake on the basis of prices delivered Chicago, store that grain in public elevators awaiting sale, and subsequently sell and reship such grain via lake and via rail for consumption in eastern territory.

A. L. Mechling, doing business as A. L. Mechling Barge Lines, his position being the same as that of the Inland Waterways and the Secretary of Agriculture, intervened both before the Interstate Commerce Commission and in this Court.

(6) The purchase of grain by the plaintiffs in No. 3714 at Chicago on a delivered price basis results in imposing on the shipper of the grain the cost incurred in connection with the inbound transportation, and when a particular mode of transportation provides a saving in transportation costs as against some other mode of transportation, that saving accrues to the inbound shipper.

(7) Two of the plaintiffs in No. 3714, *i. e.*, Continental Grain Company and Norris Grain Company, operate elevators on the banks of the Illinois waterways, some of which have no facilities for rail shipments. These plaintiffs accumulate grain at such elevators for shipment to Chicago via barge with a view to storage at that point and subsequent merchandising and reshipment.

(8) The Baltimore and Ohio Railroad Company, Erie Railroad, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and

Ohio Railway Company, carrier defendants in the above-
[fol. 3656] entitled causes, are among the eastern trunk lines which maintain the proportional or reshipping rates and the local rates above described.

(9) By tariffs filed with the Interstate Commerce Commission to become effective October 15, 1939, the carrier defendants and others propose to change their existing tariffs so as to make the above described proportional or reshipping rates maintained by them inapplicable on the reshipment of grain arriving at Chicago via the Illinois waterways, the proposal being to continue the application of such proportional or reshipping rates on ex-rail and ex-lake grain. The plaintiffs in these causes, with others, protested this change in rate application on the ground that it would result in rates which would be unreasonable in violation of Section 1 of the Interstate Commerce Act, unjustly discriminatory in violation of Section 2 of said Act, unduly prejudicial and preferential in violation of Section 3 (1) of said Act, and unlawfully discriminatory as between defendants' connecting lines in violating of Section 3 (4) thereof. Responsive to such protests, the Commission by order of October 14, 1939, suspended the proposed change in rates and instituted an investigation into the lawfulness thereof in a proceeding before it entitled I. & S. Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory. By the order mentioned, the change was suspended until May 15, 1940. The investigation proceedings were not, however, concluded at that time and the defendant carriers voluntarily postponed the effective date of the proposed change until the Commission could conclude its investigation and enter an appropriate order, and to date no change has been made in said rates.

(10) After hearings in said investigation and suspension proceeding, in which the plaintiffs participated as parties thereto, the Commission, by Division 2, issued its report and order of July 31, 1941, officially reported in 246 I. C. C. 353. In that report and order, the Commission concluded that no change in rates would in fact be produced by the suspended tariff schedules, this on the stated ground that [fol. 3657] the existing tariff schedules did not make legal provision for the application of proportional or reshipping

rates to ex-barge grain. Consistent with that theory of the case, Division 2 entered a conclusion reading:

"We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates, and find that the schedules under suspension are not shown to be unlawful. An order will be entered vacating the order of suspension, and discontinuing this proceeding."

Pursuant to the finding just quoted, Division 2 of the Commission entered an order vacating and setting aside, as of August 30, 1941, the order of investigation and suspension.

(11) Prior to the effective date of that order, the plaintiffs in No. 3714 filed with the Commission a petition for reconsideration and reargument, and the plaintiff in No. 3725 filed with the Commission a petition for reconsideration, rehearing and reargument, and the Commission postponed the effective date of its order pending action on said petitions.

(12) By report on consideration and order of December 1, 1941, the Commission granted reconsideration and denied reargument and rehearing. In that report on reconsideration, it reversed the prior finding that the proposed tariff schedules did not provide a change in rates, and, in lieu, thereof, found that the proportional rates in issue were and had been legally applicable to ex-barge traffic when certain so-called policing provisions in the tariffs had been complied with.

(13) In its report on reconsideration, the Commission found, upon the merits of the case as follows:

"The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

"On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

• • • • • • •

"(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful. [fol. 3658] "The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

"An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered."

And, pursuant to said findings, entered an order vacating and setting aside, as of December 22, 1941, the order originally entered instituting the proceeding, and discontinued the proceeding. Subsequently, the effective date of said order of December 1, 1941, was by orders extended to February 22, 1942.

(14) As preliminary to its ultimate conclusion, the Commission, in its report on reconsideration, found that it would take official notice of the fact that the Federal Barge Lines, and certain other barge lines, had filed their port-to-port grain rates with the Commission since the hearing in the cases, and also found:

"To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to 13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

"To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combinations will be 1.75, 4.75 and 0.75 cents, respectively, lower than the all-rail rates.

"To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus

880 miles rail short line to New York is 937.5 miles. The water portion of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the re-shipping points in contravention of the fourth-section rule, while the all-rail rates are in strict conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5 cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

[fol. 3659] "To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

"The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul, and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

"Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traf-

fic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers, interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations."

(15) The Commission made no finding in its report as to inbound barge rates on ex-barge grain from St. Louis and Kansas City, Missouri, or as to the movement of such ex-barge grain, although the facts as to such rates and such movement were contained in the record before it.

[fol. 3660] (16) The reference by the Commission to sixth-class rates (27.5 per cent of first class) as having been prescribed or approved as a maximum reasonable basis of rates on grain in official territory referred only to cases involving local rates on grain, and not to cases involving reshipping or proportional rates as applied to ex-rail or ex-water grain.

(17) The distance via barge from Morris, Illinois, to Chicago, mentioned by the Commission, is substantially the same as the distance via rail from and to the same points.

(18) There is no evidence in the record to support the finding of the Commission that the proposed schedules will

not prohibit the movement by barge-rail, even to trunk-line territory. The Court finds as a fact upon the undisputed evidence that the basis on which grain is purchased delivered Chicago or delivered at a river bank elevator for barge movement to Chicago imposes all costs incurred on the inbound move on the producer of the grain; that any saving in inbound costs represented by the difference between the costs via barge and via rail accrues to the producer by way of higher net prices to him; that such saving does not accrue to the Chicago elevator operator so as to be available to him to offset a penalty in railroad rates east of Chicago; that ex-barge, ex-rail and ex-lake grain of the same species and grade are not only purchased at the same price at any given time but are sold at the same price; that ex-barge, ex-rail, and ex-lake grain are sold at eastern destinations at prices named on a basis delivered at such destinations and such prices are directly predicated on the freight rate from Chicago to destination to which the grain is entitled under the tariffs; that the Chicago elevator operators received no greater profit per bushel in merchandising grain received via barge than in merchandising grain received via rail; that the grain business is done on a margin of a quarter of a cent per bushel, and a difference in price in that amount will affect a sale; that no grain has ever moved from Chicago to the east on the basis of the local rates via rail; that if the proposed tariffs become effective, ex-barge grain cannot be sold in competition with ex-rail and ex-lake grain for a rail movement to an eastern destination; that if the proposed tariffs become effective, ex-barge grain can move [fol. 3661] from Chicago only via the lake, and even that avenue of reshipment will not be available to ex-barge grain during the winter months in which navigation is closed on the Great Lakes; that the carrier defendants and other eastern railroads who propose the change did so in the expectation that the ex-barge grain would not move outbound from Chicago via rail; and that the purpose of said carriers in proposing the change was to drive the grain inbound to Chicago off of the water and onto the rails.

(19) The finding of the Commission to the effect that the physical carriage beyond the reshipping point is substantially the same for ex-barge, ex-rail, and ex-lake grain, is supported by the evidence.

(20) At the time of the hearing in the case by the Commission the proportional or reshipping rates in issue before the Commission did not constitute a portion of a through rate of which all factors were on file with the Commission, in so far as the movement of ex-barge and ex-lake grain is concerned.

(21) At the time of the report of the Commission on reconsideration in the case the proportional or reshipping rates which were in issue before the Commission did not constitute a portion of a through rate of which all factors were on file with the Commission, in so far as ex-barge and ex-lake grain moving to Chicago via private or contract carriers or in a tow exempt from regulation under Section 303 (b) of Part III of the Interstate Commerce Act is concerned.

(22) The report of Division 2 of July 31, 1941, mentioned certain facts and matters which are not referred to in the report of the Commission on reconsideration of December 1, 1941. These include:—the history of the Illinois waterways; the principal shipping points along the Illinois waterways and the distance range to Chicago, no mention being made, however, of St. Louis and Kansas City, Missouri, from which the evidence showed a movement of ex-barge grain; the volume of movement of grain moving in and out of Chicago via various modes of transportation; a description of the Illinois grain producing section and available water and rail facilities; a description of the published rail rates into Chicago, including some specially reduced intrastate rates on corn established to meet the competition of the barge lines for the inbound movement; the movement of corn into Chicago over the Illinois waterways; the barge line charges for movements from Illinois [fol. 3662] producing points to Chicago; the Board of Trade rules affecting the merchandising of grain and showing the penalty imposed on one who delivers under a future contract for rail movement, if such one is unable to accompany the delivery by inbound billing which will entitle the grain to be reshipped on the proportional or reshipping rates to the east; the Chicago elevator capacity; a comparison of barge and rail delivery costs at Chicago showing the increased net prices to the corn producer which are received when the inbound movement is by barge rather

than by rail; the situation of inbound truck grain which is not now entitled to reshipment on the proportional or reshipping rates; the efforts of the western lines in meeting inbound barge competition; and a comparison of proportional or reshipping and local rates from Chicago to representative eastern destinations.

In addition, the report contains the following statements regarding a contention of those supporting the proposed change that the present adjustment has adversely affected the all-rail rate structure:—

"The western lines, supported by the respondent eastern lines, also contend that if application of the proportional rates is to be continued on unregulated ex-barge traffic, the result will be a breaking down of the established through grain-rate structure from West to East. The evidence already detailed with respect to the inability of the reduced intrastate rates on corn to accomplish their purpose in meeting the competitive barge charges supports this contention.

• • • • • • •

"The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois. See Corn Grits from Kankakee Ill. to Battle Creek, Mich., 237 I.C.C. 413. If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain-rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

• • • • • • •

"The application of the proportional rates here in issue on ex-barge grain has already broken down a portion of the Illinois grain-rate structure to Chicago, and an imminent break-down of the grain-rate structure east of Chicago is also indicated by the evidence. Tariffs on file here show that during the pendency of this proceeding the rates on corn have been substantially reduced within the State of Indiana, as well as from Indiana to Chicago and to certain stations in Ohio."

(23) The breakdown of the rail rate structure referred to by the Commission related to the publication by western [fol. 3663] lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

(24) If the proposed rates become effective, ex-barge grain will pay a greater charge upon reshipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories.

(25) If the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for purchasers of grain at Chicago to purchase ex-barge grain.

(26) If the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

(27) The natural transportation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market. The grain of producers enjoying cheap water transportation is sold delivered at Chicago. The measure of the inbound rate has no effect upon the Chicago price; it only affects the net price to producers. Producers who cannot use water transportation are under no disadvantage whatsoever because of the transportation advantage of other farmers located upon the waterways.

(28) If the order, referred to above, because effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

(29) The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an

attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

(30) The Interstate Commerce Commission, acting by Division 4 thereof, and conformable to the Transportation Act of 1940 (amending the Interstate Commerce Act), on [fol. 3664] November 6, 1941 made its findings and order, and pursuant thereto a Certificate of Public Convenience and Necessity was issued by the Interstate Commerce Commission to the Intervening Barge Line (A. L. Mechling, doing business as A. L. Mechling Barge Line). As more fully appears therefrom, the Intervening Barge Line is a certified common carrier by water subject to Part III engaged in carriage by barge only, between all points on the Illinois Waterway north of and including Havana, Illinois, (which includes Chicago) of all kinds of grain and soy beans. As also appears from said order of November 6, 1941, the intervening carrier transported soy beans and seven kinds of grain to Chicago, Illinois, in 1939, 1940 and 1941; shipments were also made to Pekin, Illinois, in 1939; after reaching destination the commodities generally continued movement by rail or water carriers to points in other states or foreign countries.

(31) The Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of Section 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 or contrary to the National Transportation Policy enacted by the last said act; but the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

(32) The intervening plaintiff sought to intervene in the proceedings before the Interstate Commerce Commission held by it for investigation of said rate proposal before its order approving said rate proposal became effective and to present evidence before the Interstate Commerce Commission addressed to the issues whether said rate proposal was illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940 and especially Section 3(4) thereof and the new National Transportation Policy, but

the Interstate Commerce Commission refused to permit him to do so.

Upon the above and foregoing findings of fact, the Court states the following:

CONCLUSIONS OF LAW

(1) The order of the Interstate Commerce Commission of December 1, 1941, is of a character which this Court is authorized to enjoin and set aside, and this Court has jurisdiction over the subject matter of the suits.

[fols. 3665-3666] (2) Plaintiffs in the above-entitled causes have an interest and standing which entitles them to bring and maintain these suits.

(3) The carrier defendants were properly joined in these suits and the Court has jurisdiction over said carrier defendants.

(4) The order of the Interstate Commerce Commission discriminates against water competition by the users of barges.

(5) An injunction should issue as prayed for in the bill of complaint.

Evan A. Evans, U. S. Circuit Judge; Charles E. Woodward, U. S. District Judge; William H. Holly, U. S. District Judge.

Dated: April 16, 1942.

[fol. 3667] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 3714, Consolidated Cases. No. 3725

CARGILL, INCORPORATED, et al., Plaintiffs,

v.

UNITED STATES OF AMERICA, et al., Defendants

INLAND WATERWAYS CORPORATION, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants

DECREE—April 16, 1942

And now these cases having come on for hearing upon motions of plaintiffs for preliminary injunction, and for final hearing, and the cases having been consolidated by order of this Court, and the cases having been argued by counsel, and the findings of fact and conclusions of law of the court having been entered herein,

It Is Ordered, Adjudged And Decreed that the order of the Interstate Commerce Commission of December 1, 1941, entered in the proceeding known as *Investigation & Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory, be* and it is hereby enjoined, annulled and set aside, and that the operation and effect of the said order be and it is hereby perpetually enjoined, and the defendants, The Baltimore and Ohio Railroad Company, the Erie Railroad Company, The New York Central Railroad Company, The New York, Chicago, and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and Ohio Railway Company, be and they are hereby permanently enjoined and restrained from acting upon the authority of the aforesaid order of the Commission, but said defendants are not restrained or enjoined

from filing or posting any rates or tariffs, other than upon the authority of the aforesaid order.

Evan A. Evans, U. S. Circuit Judge. Charles E. Woodward, U. S. District Judge. William H. Holly, U. S. District Judge.

Dated: April 16, 1942.

[fol. 3668] And on, to wit, the 21st day of May, A. D. 1942 came the Interstate Commerce Commission et al., by their attorneys and filed in the Clerk's office of said Court their certain Petition For Appeal in words and figures following, to wit:

1979

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725
CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3714

CONSOLIDATED

PETITION FOR APPEAL

The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chciago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, inter-

veners, in the above-entitled causes, which were consolidated by order of your Honorable Court of February 6, 1942, feeling themselves aggrieved by the final decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered April 16, 1942, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants and interveners consider the decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said defendants and interveners pray that a transcript of the record, proceedings and papers upon which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 21, 1942.

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Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

[fol. 3671] And on, to wit, the 21st day of May, A. D. 1942 came the appellants by their attorneys and filed in the Clerk's office of said Court their certain Assignment Of Errors in words and figures following, to wit:

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725
CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Consolidated Civil Action File No. 3714

ASSIGNMENT OF ERRORS

Come now the Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cum-

mings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, in the above-entitled causes and file the following assignment of errors upon which they shall rely in the prosecution of the appeal to the Supreme Court of the United States herewith petitioned for in said causes from the decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered on the sixteenth (16th) day of April, 1942:

1. The Court erred in holding that the order of the Interstate Commerce Commission discriminates against water competition by users of barges.

2. The Court erred in assuming to itself the power to determine whether there was or was not discrimination.

3. The Court erred in concluding that the carrier defendants were properly joined in these suits for hearing by the specially constituted three-judge Court, and that said Court has jurisdiction to enjoin said carrier defendants.

4. The Court erred in concluding that plaintiff Inland Waterways Corporation and intervening plaintiff A. L. Mechling, doing business as A. L. Mechling Barge Line, have an interest and standing which entitle them to bring and maintain their suit.

5. The Court erred in concluding that the order of the Interstate Commerce Commission of December 1, 1941, is of a character which the Court is authorized to enjoin and set aside.

6. The Court erred in concluding that an injunction should issue as prayed for in the complaints.

7. The Court erred in failing to find that in a court review of an order of the Interstate Commerce Commission the range of issues is narrow, being limited to a determination of whether or not the Commission's order violated the Constitution, exceeded powers delegated by statute, or was such an arbitrary exercise of power as virtually to transcend the authority conferred.

8. The Court erred in substituting its judgment for that of the Interstate Commerce Commission on administrative matters which have been placed by Congress within the jurisdiction of the Interstate Commerce Commission.

9. The Court erred in weighing the evidence and reaching conclusions upon administrative matters contrary to those found by the Interstate Commerce Commission.

10. The Court erred in failing to find that the order of the Commission was:

a. within the jurisdiction of the Commission;

b. supported by substantial evidence;

c. founded upon essential findings of fact;

d. free from any error of law;

e. free from abuse of discretion or power by the Interstate Commerce Commission.

11. The Court erred in ascribing any weight to the Commission's failure to make a finding in its report as to inbound charges on ex-barge grain from St. Louis and Kansas City, Mo., or as to the movement of such barge grain although the facts as to such rates and such movement were contained in the record before it.

12. The Court erred in finding that the reference by the Commission to sixth-class rates (27.5 per cent

of first-class) as having been prescribed or approved as a maximum reasonable basis of rates on grain in official territory referred only to cases involving local rates on grain, and not to cases involving reshipping or proportional rates as applied to ex-rail or ex-water grain.

13. The Court erred in finding that there was no evidence in the record to support the finding of the Commission that the proposed schedules will not prohibit the movement by barge-rail, even to Trunk Line Territory. The Court further erred in connection with this finding in substituting its judgment, from the evidence on the point, for the conclusions reached by the Interstate Commerce Commission upon that evidence.

14. The Court erred in finding that the breakdown of the rail rate structure referred to by the Commission related to the publication by western lines of intrastate rail rates to Chicago below the normal basis of intrastate rates, and such publication was made in an effort to compete for the inbound haul of grain to Chicago.

15. The Court erred in finding that if the proposed rates were to become effective, ex-barge grain would pay a greater charge upon reshipment from Chicago to eastern destinations than will ex-rail or ex-lake grain, although the railroad services rendered east of Chicago will be identical upon the reshipment of grain in all three categories.

16. The Court erred in finding that if the proposed rates become effective, there will be less incentive than at present for a shipper to use barge service rather than rail service to Chicago from origins on the Illinois waterways and other rivers connecting therewith, and there will be less incentive for pur-

chasers of grain at Chicago to purchase ex-barge grain.

17. The Court erred in finding that if the order of the Commission of December 1, 1941, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

18. The Court erred in finding that the natural transportation advantages enjoyed by producers of grain located near the Illinois River waterways does not enable them to undersell other grain producers in the Chicago market; that the grain of producers enjoying cheap water transportation is sold delivered at Chicago; that the measure of the inbound rate has no effect upon the Chicago price; that it only affects the net price to producers. and that producers who cannot use water transportation are under no disadvantage whatsoever because of the transportation advantage of other farmers located upon the waterways.

19. The Court erred in finding that if the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

20. The Court erred in finding that the action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

21. The Court erred in finding that the Interstate Commerce Commission took no evidence addressed to the issue whether the rate proposal in question is in violation of section 3(4) of the Interstate Commerce Act as amended by the Transportation Act of 1940 or contrary to the National Transportation Policy enacted by the last said act; and that the Interstate Commerce Commission passed upon the legality of said rate proposal upon evidence taken without reference to such issues and before they existed.

22. The Court erred in admitting and considering evidence other than evidence before the Interstate Commerce Commission.

23. The Court erred in failing to hold that the evidence supports the findings and conclusions of the Interstate Commerce Commission, among which are the following:

(a) That as originally published the so-called northwest proportional rates from Chicago applied on grain originating at points in northwest territory which was specifically defined and did not include any origin points in Illinois.

(b) That the application of the proportional rates to ex-barge traffic will result in a breaking down of the established grain rate structure from west to east.

(c) That the proportional rates from Chicago to central territory destinations on grain originating in trans-Mississippi River territory are uniformly 3 cents less than the proportional rates applicable on traffic originating in northwest territory, thus maintaining the equalization prescribed in *Southwestern Millers League* v. *Atchison, T. & S. F. Ry. Co.*, 173 I. C. C. 86, 227 I. C. C. 795, 231 I. C. C. 130,

and that if the suspended schedules are found justified the increases in the rates to the central territory points named would range from 1.5 to 7.5 cents and to the eastern points named the increase would be substantially 8.5 cents.

(d) That the proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth class rates (27.5 per cent of first class) which have been prescribed or approved as a maximum reasonable basis and not unreasonable or otherwise unlawful on grain or grain products within official territory.

(e) That to central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates.

(f) That the application of the barge rates to Chicago, plus rail proportionals beyond, bring about evasions of the principle of the Fourth Section of the Interstate Commerce Act.

(g) That the proposed schedules have the effect of maintaining the existing grain rate structure which has already been partially disrupted in the State of Illinois by the application of the proportional rates on ex-barge grain, and that if the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of Fourth-Section evasions, also disrupt the grain rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore.

(h) That the application of proportional rates to ex-barge grain discriminates against all-rail movements and in favor of water-rail movements.

(i) That the application of the proportional rates on ex-barge grain has already broken down a portion of the Illinois grain rate structure to Chicago; and an imminent break-down of the grain rate structure east of Chicago is indicated.

(j) That to central territory the barge-rail combination under the proposed schedules will still be generally lower than the all-rail rate from Morris, Ill., a representative origin, via Chicago to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combination being 1.75, 4.75 and 0.75 cents respectively, lower than the all-rail rate.

(k) That to trunk-line territory the inbound barge movement represents a very small portion of the total haul, but about 0.6 per cent, and to this territory the barge-rail combinations are far below the local rates from the reshipping points in contravention of the Fourth Section rule, while the all-rail rates are in strict conformity with that rule.

(l) That the rail-lake-rail rates from the northwest do not contravene Fourth Section principles or jeopardize the all-rail rate structure.

(m) That the reshipping or proportional rates are in their essence balances of through rates and said balances are, of course, determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service.

(n) That the respondents are justified under section 1 in treating the ex-barge traffic the same as local or truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the Act.

24. The Court erred in failing to dismiss the complaints.

Dated May 21, 1942.

DANIEL W. KNOWLTON,
Chief Counsel,
DANIEL H. KUNKEL,
Washington, D. C.,
Attorneys for
Interstate Commerce Commission.

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The Atchison, Topeka and Santa Fe Railway Company,
Chicago, Burlington & Quincy Railroad Company,
Charles M. Thomson, Trustee of Chicago & North Western Railway Company,
Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

1691

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725
CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	CONSOLIDATED Civil Action File No. 3714

ORDER ALLOWING APPEAL

Filed May 21. 1942

In the above-entitled causes, the Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago

& North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final decree of this Court in these causes, entered April 16, 1942, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such cases made and provided, it is

ORDERED AND DECREED that the appeal be, and the same is hereby, allowed as prayed for,

And it is further

ORDERED that petitioners, other than the Interstate Commerce Commission, give bond in the sum of $250.00..... as a cost bond.

Dated May 21, 1942.

Holly

United States District
Court Judge.

[fol. 3685] IN DISTRICT COURT OF THE UNITED STATES

Civil Action File No. 3725, Civil Action File No. 3714
Consolidated

[Title omitted]

NOTICE OF APPEAL—Filed May 25, 1942

To: The Attorney General for the State of Illinois:

You are hereby notified that the District Court of the United States for the Northern District of Illinois, Eastern Division, on May 21, 1942, filed and entered an order allowing an appeal by The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and [fol. 3686] St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, defendants, and The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, interveners, to the Supreme Court of the United States from a decree filed and entered on the 16th day of April, 1942, in the above-entitled causes, and that the citation signed by such Court on May —, 1942, in connection with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendant's jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served on appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, sec. 47a, Act of March 3, 1911, c. 231, Sec. 210, 36 Stat. 1150, as amended by the Urgent Deficien-

[fols. 3687-3716] cies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

Dated May 21, 1942.

Daniel W. Knowlton, Chief Counsel, Daniel H. Kunkel, Washington, D. C., Attorneys for Interstate Commerce Commission. Frank H. Cole, Jr., 1315 Union Central Life Building, Cincinnati, Ohio, Leo P. Day, La Salle St. Station, Chicago, Ill., Horace L. Walker, George Dyche, Lawrence Chaffee, Attorneys for The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and The Chesapeake and Ohio Railway Company. Bryce L. Hamilton, A. B. Enoch, La Salle St. Station, Chicago, Ill., Attorneys for The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company.

Received a copy of the foregoing notice this 21st day of May, A. D. 1942.

George F. Barrett, Attorney General for State of Illinois.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

File No. 3725
Civil Action

Consolidated

CARGILL, INCORPORATED, et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.

Civil Action
File No. 3714

DEFENDANTS' (APPELLANTS') PRAECIPE FOR TRANSCRIPT OF RECORD

Filed May 21, 1942

To the Clerk of the above-named Court:

You are hereby requested to prepare a transcript of the record in the above-entitled causes to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript of record the following, to wit:

(1) Complaint and appendices thereto, in No. 3725, filed December 17, 1941.

(2) Amended Complaint in No. 3725.

(3) Answer of Interstate Commerce Commission in No. 3725.

(4) Answer of United States of America in No. 3725.

(5) Joint answer of railroad defendants in No. 3725.

(6) Petition of Intervention and Complaint of the Secretary of Agriculture in No. 3725.

(7) Notice, Petition of Intervention, and Complaint with Exhibits I and II thereto, of A. L. Mechling in No. 3725.

(8) Answer of Interstate Commerce Commission to Petition of Intervention and Complaint of Secretary of Agriculture in No. 3725.

(9) Answer of Interstate Commerce Commission to Petition of Intervention and Complaint of A. L. Mechling in No. 3725.

(10) Petition of Intervention and Answer of Alton Railroad Company, *et al.*, in No. 3725.

(11) Notice and Motion for Leave to Drop a Party Defendant and to Summon Additional Defendant, and Order of Court thereon of January 16, 1942, and Amended Complaint in No. 3725.

(12) Order of February 6, 1942, in No. 3725 granting Motion of A. L. Mechling for leave to intervene.

(13) Complaint and appendices thereto, in No. 3714, filed December 16, 1941.

(14) Answer of Interstate Commerce Commission in No. 3714.

(15) Answer of the United States of America in No. 3714.

(16) Answer of railroad defendants in No. 3714.

(17) Petition of Intervention and Complaint of the Secretary of Agriculture in No. 3714.

(18) Petition of Intervention and Answer of Alton Railroad Company, *et al.*, in No. 3714.

(19) Notice and Motion for Leave to Drop a Party Defendant and to Summon an Additional Defendant, and Order of Court thereon of January 16, 1942, and Amended Complaint, in No. 3714.

(20) Order of February 6, 1942, consolidating Nos. 3725 and 3714.

(21) Order of February 6, 1942, granting Petition of Intervention of Secretary of Agriculture and making proposed Complaint part of the record.

(22) Order of February 6, 1942, granting Motions of Attorney General for leave to file answers.

(23) Order of February 6, 1942, permitting the Alton Railroad Company, *et al.*, to intervene in behalf of defendants.

(24) Order of February 6, 1942, concluding arguments and taking the cause under advisement.

(25) Testimony introduced before the Interstate Commerce Commission at hearings dated December 19, 20, 21, 1939, and January 17, 18, 19, 20, 22, 23, 24, 25, 26, 1940.

(26) All exhibits introduced at said hearings before the Interstate Commerce Commission.

(27) Plaintiffs' requested findings of fact and conclusions of law.

(28) Interstate Commerce Commission's suggested findings of fact and conclusions of law.

(29) Secretary of Agriculture's suggested findings of fact and conclusions of law.

(30) A. L. Mechling's suggested findings of fact and conclusions of law.

(31) Defendant rail carriers' suggested findings of fact and conclusions of law.

(32) The Alton Railroad Company, *et al.*, suggested findings of fact and conclusions of law.

(33) Findings of fact and conclusions of law entered by District Court.

(34) Final Decree.

(35) Petition for Appeal.

(36) Notice of Appeal and acknowledgment of service.

(37) Assignments of error.

(38) Order allowing appeal.

(39) Notice to Attorney General of the State of Illinois.

(40) Citation on appeal.

(41) Statement of jurisdiction of the Supreme Court of the United States.

(42) Praecipe for transcript of record and acknowledgment thereof.

DANIEL W. KNOWLTON,
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Washington, D. C.,
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Interstate Commerce Commission.

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The New York, Chicago and St. Louis Railroad Company,
The Pennsylvania Railroad Company,
Erie Railroad Company, and
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Chicago, Burlington & Quincy Railroad Company,
Charles M. Thomson, Trustee of Chicago & North Western Railway Company,
Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and
Illinois Central Railroad Company.

Service of the foregoing praecipe for transcript of record and receipt of copy thereof are hereby acknowledged this ..... day of May, 1942.

.....

For Inland Waterways Corporation; Cargill, Inc.; Norris Grain Co.; Rosenbaum Brothers; Santa Fe Elevator Co.; Continental Grain Co.

.....

For Secretary of Agriculture.

.....

For A. L. Mechling, doing business as A. L. Mechling Barge Line.

1700

[fol. 3738] And on, to wit, the 26th day of January, A. D. 1942 came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Notice, Motion for Preliminary Injunction and Supporting Affidavit in words and figures following, to wit:

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INLAND WATERWAYS CORPORATION,
Plaintiff,
vs.
UNITED STATES OF AMERICA, et al.,
Defendants.

Civil Action
File No. 3725

NOTICE

To: Mr. S. R. Brittingham, Jr.
Special Assistant to Attorney General
Department of Justice
Washington, D. C.

Mr. Daniel H. Kunkel, Attorney
Interstate Commerce Commission
Washington, D. C.

Mr. J. Albert Woll
U. S. District Attorney
450 U. S. Court House
Chicago, Illinois

Mr. Frank H. Cole, Jr.
Mr. Erich W. Lademann
Attorneys for B. & O. R. R. Co.
315 Grand Central Station
Chicago, Illinois

Mr. Clyde E. Shorey
Attorney for Erie Railroad
2130 Field Bldg.
Chicago, Illinois

Mr. Leo P. Day, Attorney
New York Central System
525 LaSalle St. Station
Chicago, Illinois

Mr. Horace L. Walker
Mr. Bryce L. Hamilton
Attorneys for The N. Y. C. & St. L. R. R. Co.
1400 First Nat'l Bank Bldg.
Chicago, Illinois

Mr. Theodore Schmidt
Mr. George F. Dyche
Attorneys for Penn. R. R. Co.
625 Union Station, Chicago, Ill.

Mr. Horace L. Walker
Mr. William G. Wise
Attorneys for C. & O. Ry. Co.
69 W. Washington, Chicago, Ill.
Attorneys for Defendants.

PLEASE TAKE NOTICE that on Friday, the 6th day of February, 1942, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, I shall appear before His Honor, Judge Charles E. Woodward, in his courtroom, Room 677, United States Courthouse, Chicago, Illinois, or before whatever judge may be sitting in his place and stead, and then and there present a motion on behalf of plaintiff for the issuance of a preliminary injunction as prayed for in the complaint of the above-entitled cause, copies of which motion and supporting affidavits are attached hereto.

(Signed) NUEL D. BELNAP,
(Signed) ROBERT N. BURCHMORE,
Attorneys for Plaintiff,
2106 Field Building,
Chicago, Illinois.
Central 0204.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

Robert N. Burchmore, being first duly sworn, deposes and says that he has served copies of the foregoing notice, motion, and supporting affidavits therein described upon the defendants in the above-entitled case, by depositing the same in the United States mails in Chicago, Illinois, on January 26, 1942, addressed to their attorneys of record, as above, in sealed envelopes with proper postage prepaid.

(Signed) ROBERT N. BURCHMORE.

Subscribed and sworn to before
me this 26th day of January,
1942.

HARRIET BOGANS,
Notary Public.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

Inland Waterways Corporation, *Plaintiff*, vs. United States of America, *et al.*, *Defendants*.	Civil Action No. 3725

MOTION FOR PRELIMINARY INJUNCTION.

Now comes plaintiff in the above-entitled cause by its attorneys and moves this Court to enter a preliminary injunction, enjoining and setting aside the operation and effect of a certain order of the Interstate Commerce Commission of December 1, 1941, in Investigation and Suspension Docket No. 4718, *Grain Proportional Ex-Barge to Official Territory*, and to enter a further preliminary injunction, enjoining and prohibiting the carrier defendants from making effective under the authority of said order the changes in their tariffs and schedule of rates approved as lawful by the Commission in said order of December 1, 1941, which said preliminary injunctions were prayed for in the complaint heretofore filed herein, and in support of said motion plaintiff presents the attached affidavits, which said affidavits are made a part hereof as fully as if incorporated herein.

WHEREFORE, plaintiff prays that the said preliminary

injunction may be issued forthwith, as prayed for in the verified complaint filed herein.

Respectfully submitted,

(Signed) NUEL D. BELNAP,
(Signed) ROBERT N. BURCHMORE,
Attorneys for Plaintiff,
2106 Field Building,
Chicago, Illinois.
Central 0204.

AFFIDAVIT.

STATE OF MISSOURI,
CITY OF ST. LOUIS. } ss.

H. E. Ruddiman, being first duly sworn, deposes and says that he is General Traffic Manager and duly authorized agent of the plaintiff Inland Waterways Corporation, in the above-entitled cause; that the following facts are true and require immediate issuance of the preliminary injunction sought herein:

1. The plaintiff, Inland Waterways Corporation, hereinafter referred to as the barge line, is a common carrier by water in interstate commerce which operates a barge line for the transportation of property on the Mississippi River between New Orleans, Louisiana, and Minneapolis, Minnesota, and on certain of its tributaries, including the Missouri River from Kansas City, Missouri-Kansas, to its confluence with the Mississippi River, and the Illinois waterway from Chicago, Illinois, to its confluence with the Mississippi River. Via this barge line it transports general commodities, including grain in bulk, from numerous origins on the various rivers which it serves to Chicago, Illinois.

2. In the years 1939, 1940, and 1941, during the season of open navigation on the rivers on which it operates, the barge line transported to Chicago the following quantities of grain in bulk, all of said grain having been transported in tows with freight other than bulk commodities: 43,292 tons in 1939, 38,985 tons in 1940, 37,093 tons in 1941.

This grain consisted of wheat and corn, and came from the following origins: Havana, Dallas City, Montezuma, Kampsville, Naples and East St. Louis, Illi-

nois, St. Louis and Kansas City, Missouri, Kansas City, Kansas, Memphis and Heloise Siding, Tennessee.

3. During the open season of navigation, the barge line continually solicits grain from the origins above named, and from other origins from which it provides rates for barge movement, to Chicago. In so doing, it competes with various lines of railroad operating as common carriers by railroad in interstate commerce from said origins to Chicago, Illinois. Said lines of railroad include, among others, the lines of The Atchison, Topeka and Santa Fe Railway Company, the Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Chicago and North Western Railway Company, and the Illinois Central Railroad Company. All of said lines of railroad terminate at Chicago and those companies do not operate lines of railroad to the east thereof.

4. Both the barge line and competing railroads transport grain in bulk to Chicago from Kansas City, Missouri-Kansas, and from other origins above named. On arrival of such grain at Chicago, it is the practice both of the barge line and of the competing railroads to deliver such grain to the owner thereof at storage elevators in the Chicago switching district, grain arriving both via barge and via rail being delivered at the same elevators. This grain is commonly referred to as ex-rail or as ex-barge grain, depending upon the nature of the inbound transportation. Similarly, grain arriving at Chicago via lake steamer from other lake ports is likewise delivered to the owner thereof at the same elevators as is ex-rail or ex-barge grain, and is commonly referred to as ex-lake grain.

5. Prior to March 1, 1941, none of the rates charged by plaintiff for the transportation shown above were on file with the Interstate Commerce Commission; since March 1, 1941, all of the rates maintained and assessed by plaintiff, including the rates provided by it for the transportation of bulk grain from the ports above named to Chicago, and between other ports, have been filed with the Interstate Commerce Commission, pursuant to the requirements of Part III of the Interstate Commerce Act. (Transportation Act of 1940, 54 Stats. 898.)

6. At the present time, the railroad defendants in the above-entitled suit, and other railroads operating to the east from Chicago duly publish, maintain and file with the Interstate Commerce Commission tariffs under which ex-barge grain from Kansas City, Missouri-Kansas, and from all other origins on the inland waterways to the west of Chicago, ex-rail grain from Kansas City, Missouri-Kansas, and from all other origins on railroads to the west of Chicago, and ex-lake grain from Duluth, Minnesota, and from other lake ports (or other grain occupying the status of such grain in the sense noted in the immediately succeeding paragraph) may be reshipped from Chicago to eastern destinations via the lines of said defendant railroads on a proportional or reshipping rate (which, to New York, for example, is 26 cents per hundred pounds), provided only that the billing covering the inbound move via rail, via barge, or via lake is properly recorded with representatives of the outbound rail carriers, that the reshipment takes place within a year after the termination of the inbound move, and that certain other requirements of the railroad tariffs relating to the proper identification of the grain as having

received a transportation service to Chicago have been complied with. Said proportional or reshipping rate is less than the local rate which is provided in the defendant's tariffs to apply on all grain not entitled to the proportional or reshipping rate when shipped from Chicago to eastern destinations, the local rate to New York, for example, being 34½ cents per hundred pounds, or 8½ cents higher than the proportional or reshipping rate. Similar proportional or reshipping rates less than local rates are maintained to all destinations east of Chicago, said rates differing from the representative rates to New York just stated only in the amount thereof and the amount of the difference between the lower proportional or reshipping rates, on the one hand, and the higher local rates on the other.

7. In making such a reshipment on a proportional or reshipping rate, the shipper is not required by the present tariffs of the defendants to reship the identical grain received inbound but is required only to certify that the tonnage offered for the outbound reshipment is representative of the tonnage transported to Chicago upon the inbound billing registered with representatives of the outbound carrier. Consequently, all references herein to ex-rail, ex-barge, or ex-lake grain are to be understood as meaning either the identical grain or grain representative thereof, within the meaning of the tariff rules.

8. Grain heretofore transported to Chicago by the barge line has been reshipped to eastern destinations under the arrangement and upon the proportional or reshipping rates above described.

9. If the order of the Commission sought to be enjoined in the above-entitled case becomes effective, ac-

cording to its terms, on February 22, 1942, the railroads to whom that order is directed, including the railroads who are defendants in the above-entitled suit, have announced an intention to act upon the authority thereby conferred.

10. If the railroad defendants herein are permitted to make effective the change in rates authorized by said order and proposed by defendants, the defendants will thereafter transport ex-rail grain from Kansas and the ex-lake grain from Duluth on proportional or reshipping rate of 26 cents to New York when such grain is reshipped from Chicago thereto, but will cease to transport ex-barge grain from Kansas City at that rate and will demand a rate of 34½ cents when such grain is reshipped from the same elevator in Chicago to the same elevator in New York via the same line of railroad. To all other destinations east of Chicago, there will be similar differences between the rates applicable upon a reshipment of ex-barge grain, on the one hand, and ex-rail or ex-lake grain on the other hand, differing only in the amount by which the rate on ex-barge is made higher.

11. If the tariff rate via the lines of the defendant railroads on ex-barge grain to New York City is made 8½ cents higher than the tariff rate maintained by the same lines of railroad on ex-rail or ex-lake grain, and if similar rate spreads, differing only in the amount thereof, are made effective to other rate destinations in the states to the east of Chicago, it will be impracticable to reship ex-barge grain from Chicago to eastern destinations via railroad. Consequently no shipper at an origin west of Chicago served by the barge line, having grain to ship to Chicago, will use the service of the barge line in the transportation of such grain

if either such shipper or his vendee desires to reship such grain via railroad to a destination east of Chicago,

12. If the order sought to be enjoined in the above-entitled suit becomes effective and if the railroads, defendants herein, make the change in rates and charges authorized thereby, the grain which plaintiff transports via barge from Kansas City and other origins to Chicago will not be entitled, under the tariffs, to the same privileges and rates upon reshipment from Chicago to eastern destinations, such as New York, as said grain would be entitled to if transported from Kansas City and other origins to Chicago via the line of a rail carrier or if transported from any lake port to Chicago via a lake steamer.

Under such circumstances there will be less incentive for shippers to use the service of the barge line to Chicago and a correspondingly greater incentive to use to Chicago the service of railroads with which the barge line competes; and the plaintiff will not secure for transportation to Chicago as much grain as it would secure if the same rates were applied upon a reshipment of ex-barge grain as will be applied upon a reshipment of ex-rail or ex-lake grain.

13. By reason of these facts immediate and irreparable injury, loss, and damage will result to the plaintiff unless the preliminary injunction be issued forthwith.

(Signed) H. E. Ruddiman.

Subscribed and sworn to before
me this ..... day of January,
1942.

C. S. Murray,
Notary Public.

[fol. 3751] IN DISTRICT COURT OF THE UNITED STATES

Civil Action File No. 3714

Civil Action File No. 3725

[Title omitted]

TRANSCRIPT OF PROCEEDINGS—Filed June 3, 1942

Be it Remembered, that heretofore, to wit, on Friday, the 6th day of February, A. D. 1942, at the hour of 10 o'clock A. M., being one of the days of said term of court, before the Honorable Evan A. Evans, Judge of the United States Circuit Court of Appeals; Charles E. Woodward, and William H. Holly, Judges of the United States District Court, this cause came on for hearing upon the pleadings heretofore filed herein.

—2—

APPEARANCES:

Nuel D. Belnap and Robert N. Burchmore, representing the plaintiffs;
Edward B. Hayes, representing the intervening petitioner, A. L. Mechling;
[fol. 3752] Haskell Donoho, representing the United States Department of Agriculture;
F. J. Cody, representing J. Albert Woll, United States District Attorney;
Daniel H. Kunkel, representing the Interstate Commerce Commission;
Frank H. Cole, Jr., representing Rail Carrier Defendants;
Lawrence Chaffee, representing C. & O. RR., and Nickel Plate RR;
A. B. Enoch, representing intervening Western rail carriers.

COLLOQUY

The Clerk: Civil Action File No. 3714 and 3725, Cargill, Incorporated, versus United States of America, et al.; leave to file answer of Attorney General.

Mr. Cody: Your Honors, my only purpose is to try to clarify the interest of the United States in this case. Under

Title 28, Section 45-A, the Attorney General is to represent the United States in actions of this type. However, the

—3—

answer forwarded by the Attorney General yesterday, and which I filed, stated that the Attorney General did not wish to take part in the proceedings as the Department of Agriculture is seeking to be made a party plaintiff, and the Interstate Commerce Commission is already in the case as a party defendant. So Mr. Donoho is here to represent the Department of Agriculture and Mr. Kunkel to represent the Interstate Commerce Commission.

So all we want to do is file answers, and let them handle the interests of the Government.

[fol. 3753] Judge Evans: You say you want to file answers?

Mr. Cody: Yes, sir.

Judge Evans: Will they be any different from what they were?

Mr. Cody: We state in our answers that the Attorney General isn't taking part in the proceedings.

Judge Woodward: The answers have been filed?

Mr. Cody: Yes, they are filed.

Judge Evans: All right. Is there anything else?

The Clerk: No. 3725, Inland Waterways Corporation versus United States of America, et al., leave to file petition of intervention of A. L. Mechling, doing business as Mechling Barge Lines.

Mr. Hayes: The Department of Agriculture and the A. L.

—4—

Mechling Barge Lines are both seeking leave to intervene as plaintiffs in this cause. My motion is on file for leave to intervene, and I do not understand it is opposed by the other side.

Judge Evans: Whom do you represent?

Mr. Hayes: I represent the A. L. Mechling Barge Line, your Honor. The Mechling Barge Line is the line which brought most of the grain to Chicago over the period that was covered by this record.

Judge Evans: Permission is granted.

Mr. Hayes: There is one thing, your Honors, there are answers on file either to the intervening petition of the Department of Agriculture or to my petition, and I pre-

sume a rule to answer in a short time will be agreeable to counsel.

Judge Evans: Well, they are here today, aren't they?

Mr. Hayes: Yes, but the issues are——

[fol. 3754] Judge Evans: Have there been any answers filed to the intervening petitions?

Mr. Kunkel: If your Honors please, the Interstate Commerce Commission does not oppose this intervening petition. They do desire to file answers to the intervening complaint.

Judge Evans: That will take time then.

Mr. Kunkel: I think we can state generally that the an-

—5—

swer of the Commission will be a denial of the allegation of errors set up in the intervening complaint, and that the answer can be filed within a day or two. In other words, I don't see that there is any obstacle to proceeding with the complete hearing on the merits this morning.

Judge Woodward: Wasn't an answer filed to the original complaint?

Mr. Kunkel: He makes several allegations of error that are not set up in the original complaint.

Judge Evans: We will take it for granted then the answer is a general denial of the allegation of errors.

The Clerk: No. 3714 and No. 3725, Cargill, Incorporated, et al., versus United States of America, et al., and Inland Waterways Corporation versus United States of America, et al., leave for petition of intervention of Secretary of Agriculture is granted and the complaint is made a part of the record?

Judge Evans: That will be granted.

The Clerk: No. 3725, Inland Waterways Corporation versus United States of America, et al., and No. 3714, Cargill, Incorporated, versus United States of America, leave to consolidate with No. 3714, Cargill, Incorporated, versus United States of America, et al.

Judge Evans: No objection?

[fol. 3755] —6—

Mr. Burchmore: I represent the moving party, your Honors.

Judge Evans: No objection; it will be granted.

The Clerk: No. 3714 and No. 3725, Cargill, Incorporated, et al., versus United States of America, et al., and Inland Waterways Corporation versus United States of America, et al., consolidated for hearing.

Judge Evans: All right, proceed.

Mr. Enoch: If your Honors please, several days ago on behalf of the Western lines, Chicago, Alton, and others, I served notice that I would present to your Honor, Judge Woodward, a petition for leave to intervene and file answer. That petition was presented here several days ago, and the motion for leave to intervene and file answer was continued until this morning. I would like to present that motion now and ask the Court to rule on it.

Judge Evans: Is there any objection to it? (No response.) Granted. I suppose we are now ready to proceed.

Mr. Belnap: If the Court please, this case is noticed for hearing today on a motion for an interlocutory injunction on behalf of the plaintiffs, and by affidavits. I have talked to the opposing parties in the case and I understand it is agreeable to all that the hearing today may stand as the final hearing in the cause.

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Judge Evans: That is very agreeable. The Court will accept the stipulation of the parties, and the hearing which is on the temporary order will be a hearing on the final order.

Mr. Belnap: Thank you.

Judge Evans: Now then, proceed.

And thereupon the plaintiffs, to maintain the issues on their behalf, introduced the following evidence, to wit:

[fol. 3756] Mr. Belnap: On behalf of the plaintiffs in the two causes, I desire to offer in evidence a copy of the transcript of evidence before the Commission, certified to by the Secretary of the Commission, there being two certificates, one covering the transcript proper and the other the exhibits in the case.

Judg Evans: Now then, is there any objection to that offer? (No response.) Then it may be received.

(Whereupon, the said documents were marked and received in evidence as Plaintiffs' Exhibit No. 1, and the same are in words and figures as follows:)

[fol. 3757] Page 8

Mr. Belnap: Purely for the purpose of completing the record, I desire to offer a certified copy of the order of the Commission postponing the effective date of its order, which is the subject of these suits, to February 22, 1942.

Judge Evans: It may be received.

(Whereupon, the said document was marked and received in evidence as Plaintiffs' Exhibit No. 2, and the same is in words and figures as follows:)

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Mr. Hayes: On behalf of the intervening plaintiff, Mechling, I desire to offer in evidence certified copies of the order of the Commission of November 6, 1941, finding that line to be a common carrier subject to Part 3, and also of the certificate granted pursuant to that order to engage in the transportation of grain to points on the Illinois River and the waterway north of and including Havana, Illinois, which, of course, includes Chicago and the rate-break points in question.

(Whereupon, said document was marked for identification as Intervening Plaintiff's Exhibit No. 1.)

Mr. Hayes: I also desire to offer in evidence the order of the Commission, a certified copy of it, denying the application for administrative relief in this cause, which was made by A. L. Mechling.

(Whereupon, said document was marked for identification as Intervening Plaintiff's Exhibit No. 2.)

Judge Evans: Is there any objection?

Mr. Kunkel: If your Honors please, the offer of the re-
[fol. 3758] port and order of the Commission, in which the Commission finds the Mechling Barge Line to be a common carrier is, of course, not part of the evidence that was

Page 10

before the Commission, and constitutes new evidence in this cause. I think that it is unnecessary to put this in at this time. The Commission in its report recognized the common carrier status of this company and I think that would be sufficient for the intervener's purposes in this case.

Mr. Hayes: Not quite. The Commission did say it could take official notice of actions which had been taken by the Commission after the report of Division 2 in this cause. Having so stated, it was, of course, before the Commission in respect of everything that had been done by the Commission in this collateral proceeding before the Commission.

Your Honors should be advised, I think, of the facts specifically of which the Commission says that it did take official notice and which are not recited in detail in the specific record that has been filed here, but which are included in the offers which I have now made. Unless counsel doesn't feel that the Court ought to consider the matters which the Commission says it took official notice of, he may withdraw his objection.

Mr. Kunkel: I think counsel has stated the very reason this objection is valid, your Honors, because the Commis-

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sion in issuing its report and order on the application of this barge line had an entirely different record before it than it did in this case, and the findings contained in that report are based upon the record in that other case.

Judge Evans: We will receive the exhibits.

Mr. Hayes: That includes the offer of the order of No-
[fol. 3759] vember 6 and the order denying the application for administrative relief, and the certificate?

Judge Evans: Both.

(Whereupon, said documents were received in evidence as Intervening Plaintiff's Exhibits No. 1 and No. 2, respectively, and the same are in words and figures as follows:)

Page 12

Judge Evans: Anything further on the part of the plaintiffs or petitioning shippers?

Mr. Belnap: If the Court please, I shall present the case on behalf of the plaintiffs in No. 3714.

Judge Evans: Wait; is there any evidence to be offered, any further evidence?

Mr. Belnap: No.

Judge Evans: Is there any evidence on the other side?

Mr. Kunkel: We have nothing to offer.

Judge Evans: Has anybody got any further evidence? (No response.) Then the testimony is closed.

Mr. Belnap: The testimony is closed.

(Which was all of the evidence offered or received.)

(The matter was then argued.)

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Judge Evans: This case is one which will probably have to go to the Supreme Court, and we have given you the benefit of a rather extended argument, when as a matter of fact all you are looking for is some decision so that you can go on.

The argument has been really very interesting—not so much interesting, that isn't the exact word—it has been [fol. 3760] complicated and intricate, rather than interesting, to be perfectly frank.

We will give the best we can to you and try to dispose of it. It seems as though it is of such importance that the losing side will not abide by the decision until the Supreme Court has disposed of it. That is, if it is as clear as each side seems to think, this matter can be disposed of very quickly in the Supreme Court.

We will try to get it out as early as we can. We don't feel, having a duty to perform, even in the position we are in, being an intermediary step to the Supreme Court, we should dispose of it without some consideration.

Mr. Hayes: If your Honors please, we don't consider this decision as a pro-forma matter. The statute contemplates a three-judge court.

Judge Evans: That is the way we have to look at it.

Page 14

Mr. Belnap: Your Honors, I have for the plaintiff requested findings of fact and conclusions of law, which I would like leave to file, one for the record and three for the Court.

Judge Holly: Are there findings of fact and conclusions of law submitted by all the parties?

Mr. Kunkel: They haven't been prepared on behalf of the defendants.

Mr. Cole: We haven't prepared them yet.

Judge Evans: Get them in as soon as you can.

Mr. Kunkel: We will do so.

Judge Evans: Because we want to dispose of this as quickly as we can.

Mr. Kunkel: Will the Court allow us ten days for that purpose?

Mr. Belnap: May I call your attention to the fact the order becomes effective the 22nd of this month.

[fol. 3761] Mr. Cole: Today is the 6th.

Judge Evans: I think you ought to have it in in six days.

Mr. Hayes: The same for the intervening plaintiff?

Judge Evans: Yes. That will be all then.

(Which was all of the proceedings had in the hearing of the above entitled cause.)

[fol. 3762] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 3763] And on, to wit, the 16th day of April, A. D. 1942 came the Plaintiff by attorneys and filed in the Clerk's office of said Court its certain Exhibit No. 2 in words and figures following, to wit:

[fols. 3764-3765] PLAINTIFFS' EXHIBIT No. 2

Order

INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 4718

Grain Proportionals Ex-Barge to Official Territory

Re Request for Postponement of Effective Date of Order of December 1, 1941

Present: Claude R. Porter, Commissioner, to whom the above-entitled matter has been assigned for action thereon.

Upon consideration of the request of the court in the above-entitled case that the effective date of the order of December 1, 1941, be further extended, and for good cause appearing:

It is ordered, That the order of this Commission of December 1, 1941, presently effective January 22, 1942, be,

and it is hereby modified so as to extend the effective date thereof to February 22, 1942.

Dated at Washington, D. C., this 10th day of January, A. D., 1942.

By the Commission, Commissioner Porter.

W. P. Bartel, Secretary.

A true copy.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 3766] INTERVENING PLAINTIFFS' EXHIBIT No. 1

INTERSTATE COMMERCE COMMISSION

No. W-630

A. L. Mechling Barge Line Common Carrier Application

Submitted October 1, 1941. Decided November 6, 1941

Applicant found entitled to continue operation as a common carrier by non-self-propelled carrying vessel in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana, Ill., by reason of having been engaged in such operation on January 1, 1940, and continuously since. Certificate of public convenience and necessity issued.

Edward B. Hayes for applicant.

Report of the Commission

Division 4, Commissioners Porter, Mahaffie, and Miller

By Division 4:

By application filed May 29, 1941, A. L. Mechling, an individual doing business under the trade name and style of A. L. Mechling Barge Line, of Joliet, Ill., seeks a certificate of public convenience and necessity under section 309 (a) of the Interstate Commerce Act authorizing continuance of operation as a common carrier by water, in interstate or foreign commerce, in the transportation of grain and

soy beans between all points on the Illinois Waterway [1] and on the Mississippi River between Burlington, Iowa, and New Madrid, Mo., inclusive. No objection to the application has been offered.

The application for the authority sought is based in part upon the so-called "grandfather" clause of section 309 (a), which provides for the issuance of a certificate upon proof of bona fide operation on January 1, 1940, and continuously since. Such operation has been conducted between points on the Illinois Waterway north of and including Havana, Ill. The evidence submitted with the application establishes these rights, and a certificate will be issued authorizing the continuance of those operations. In addition applicant seeks authority to continue so-called "interim" operations south and west of Havana, which were begun between January 1, 1940, and February 1, 1941. To secure a certificate authorizing continuance of these latter operations, applicant must prove that they are or will be required by the present and future public convenience and necessity. The present record is insufficient to support this claim, and we will set this part of the application for hearing.

Applicant has been in operation since 1930. He owns and operates 7 towboats and 17 barges, and has under charter 4 other barges. He has transported soy beans and 7 kinds of grain in bulk during 1939, 1940, and 1941 from Havana, Pekin, Peoria, Chillicothe, Lacon, Henry, Hennepin, LaSalle, Ottawa, Seneca, Paytonville, and Morris, Ill., to Chicago. Shipments were also shown to Pekin in 1939. After reaching destination the commodities generally continue movement by rail or water carriers to points in other States or to foreign countries. On or before January 1, 1940, applicant served every grain shipper from every grain shipping point along this section of the Waterway. He has held himself out to serve all points along the Waterway and since the latter date has served points, other than those named, when the traffic became available. In view of these facts we conclude that applicant is a common carrier of grain and soy beans, and that he should be author-

[1] The Illinois Waterway consists of the Illinois River, the Des Plaines River from the Illinois River to the Sanitary and Ship Canal, the Sanitary and Ship Canal, the Chicago River and its branches, the Calumet-Sag Channel, Little Calumet River, and Calumet River.

ized to operate between all points on the Waterway north of and including Havana.

Applicant furnishes transportation by barge and we will limit his service to that type of operation. Classification of carriers in terms of their type of operation assures the public that the same type of service will be continued by them. In this manner the competitive balance of types of carriers over the same route will not be disrupted by changes which they might make without first securing from this Commission the necessary certificate of public convenience and necessity. We will, therefore, as a general policy employ such a classification in defining the operating rights of water carriers subject to part III of the act.

Although applicant has been transporting commodities in bulk, he does not claim exemption under section 303 (b) of the act, because practical operation requires transportation of more than three commodities in part of the tows.

We find that applicant was in bona fide operation on January 1, 1940, as a common carrier by non-self-propelled carrying vessels in interstate or foreign commerce, in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana; that such operation has been continued since that date; and that a certificate of public convenience and necessity should be issued authorizing continuation of such operation, subject to general conditions which are necessary to carry out, with respect to continuation of applicant's operations, the reqiurements of part III of the act, and the orders, rules, and regulations of the Commission thereunder.

An appropriate certificate will be issued.

[fol. 3767] CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 6th day of November, A. D. 1941

No. W-630

A. L. Mechling Barge Line Common Carrier Application

Investigation of the matters and things involved in this proceeding having been made, and said division having on

the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is hereby certified, That public convenience and necessity require the continuation of operation by A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, as a common carrier by non-self-propelled carrying vessels, in interstate or foreign commerce, in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana, Ill.

It is ordered, That said carrier be, and he is hereby, authorized to perform the service specified above; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of such authority.

It is further ordered, That the holding of this certificate by said carrier be, and it is hereby, conditioned upon the exercise of the authority specified above, and upon compliance by said carrier with the requirements of the act and the orders, rules, and regulations of the Commission thereunder.

It is further ordered, That this certificate shall take effect and be in force from and after 45 days from its date.

By the Commission, division 4.

W. P. Bartel, Secretary.

A true copy.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fols. 3768-3769] INTERVENING PLAINTIFF'S EXHIBIT No. 2

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

I. & S. No. 4718

Grain Proportionals Ex-Barge to Official Territory

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petitions

of A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, for leave to intervene and for rehearing and reconsideration, and of Finnegan Warehouse Company for reconsideration:

It is ordered, That the said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

A true copy: W. P. Bartel, Secretary of the Interstate Commerce Commission.

IN THE

District Court of the United States

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

CARGILL, INCORPORATED, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3714
Consolidated	
INLAND WATERWAYS CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants.	Civil Action File No. 3725

PLAINTIFFS' (APPELLEES') DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD DESIRED TO BE INCLUDED IN THE TRANSCRIPT OF RECORD.

Filed June 3, 1942.

TO THE CLERK OF THE ABOVE-NAMED COURT:

You are hereby requested in preparing a transcript of the record in the above-entitled causes to be filed in the Supreme Court of the United States, pursuant to the appeal allowed therein, to include in such transcript the following portions of the record in addi-

tion to those indicated by the defendants (appellants), to wit:

(1) Notice and motion of plaintiffs for preliminary injunction and supporting affidavit in No. 3714, filed January 26, 1942.

(2) Notice and motion of plaintiff for preliminary injunction and supporting affidavit in No. 3725, filed January 26, 1942.

(3) Reporter's transcript of proceedings at hearing on February 6, 1942.

(4) Plaintiffs' Exhibit No. 2.

(5) Intervening plaintiff A. L. Mechling's Exhibits Nos. 1 and 2.

(6) This designation of additional portions of the record.

NUEL D. BELNAP,
ROBERT N. BURCHMORE,
2106 Field Building,
Chicago, Illinois,
Attorneys for
Cargill, Incorporated,
Norris Grain Company,
Santa Fe Elevator Corporation,
Rosenbaum Brothers,
Continental Grain Company,
Inland Waterways Corporation.

EDWARD B. HAYES,
175 W. Jackson Blvd.,
Chicago, Illinois,
Attorney for A. L. Mechling, doing business as A. L. Mechling Barge Line.

AFFIDAVIT OF SERVICE.

Nuel D. Belnap, being first duly sworn, deposes and says: that he served copies of the foregoing designation of additional portions of the record desired to be included in the transcript of record upon the defendants in the above-entitled cause, by depositing the same in the United States mail, in sealed envelopes with proper postage prepaid, at Chicago, Illinois, on June 3, 1942, addressed to their attorneys of record, as listed on Defendants' (Appellants') Praecipe for Transcript of Record.

.....

NUEL D. BELNAP.

Subscribed in my presence, and sworn to before me, by the affiant above named, this 3rd day of June, 1942.

.....

FLORENCE M. SULLIVAN,

(Seal) *Notary Public.*

My commission expires April 23, 1945.

[fols. 3778-3790] Bond on appeal for $250.00, approved June 3, 1942, omitted in printing.

[fol. 3791] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 3792] And on, to wit, the 25th day of May, A. D. 1942, there was in the Clerk's office of said Court a certain Citation in words and figures following, to wit:

1731

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION,
Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Defendants.

Civil Action
File No. 3725

CONSOLIDATED

CARGILL, INCORPORATED, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Defendants.

Civil Action
File No. 3714

CITATION ON APPEAL

To:

INLAND WATERWAYS CORPORATION; CARGILL, INCORPORATED; NORRIS GRAIN COMPANY; ROSENBAUM BROTHERS; SANTA FE ELEVATOR COMPANY; CONTINENTAL GRAIN COMPANY; THE SECRETARY OF AGRICULTURE; A. L. MECHLING, DOING BUSINESS AS A. L. MECHLING BARGE LINE, Plaintiffs,

GREETING:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States

in the City of Washington, District of Columbia, on the ..... day of June 1942, pursuant to an order filed and entered in the office of the District Court of the United States for the Northern District of Illinois, Eastern Division, allowing an appeal from a decree entered April 16, 1942, in the above-entitled causes, to show cause, if any there be, why said decree rendered against defendants-appellants should not be reversed and set aside and why justice should not be done in behalf of said defendants-appellants.

WITNESS, the Honorable .....,
District Court Judge for the United States District Court for the Northern District of Illinois, Eastern Division.

Dated May 21, 1942.

Holly

U. S. District Court Judge.

Service of the above citation on appeal and receipt of a copy thereof is hereby acknowledged this ..... day of May, 1942.

WALTER, BURCHMORE AND BELNAP,
ROBERT N. BURCHMORE and
NUEL D. BELNAP,
For Inland Waterways Corporation; Cargill, Incorporated; Norris Grain Company; Rosenbaum Brothers; Santa Fe Elevator Company; Continental Grain Company.

HASKELL DONOHO,
For Secretary of Agriculture.

EDWARD B. HAYES,
For A. L. Mechling, doing business as A. L. Mechling Barge Line.

[fol. 3795] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE RECORD TO BE PRINTED—Filed July 9, 1942

Now comes the Interstate Commerce Commission, the Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, The Chesapeake and Ohio Railway Company, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railroad Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, appellants, and say that they will rely in brief and oral argument in the above-entitled cause upon the following points:

I. The lower court transcended its powers in passing upon administrative questions which have been exclusively committed to the jurisdiction of the Interstate Commerce [fol. 3796] Commission.

II. The carrying into effect of the national transportation policy is committed to the Interstate Commerce Commission and the lower court usurps the Commission's function in assuming to substitute its judgment for that of the Commission with respect to carrying out of that policy.

III. The lower court erred in weighing the evidence so as to arrive at subordinate factual findings contrary to those reached by the Interstate Commerce Commission upon the same evidence.

IV. The findings of the Interstate Commerce Commission were based upon substantial evidence and afforded a rational basis for its ultimate finding that the rates in ques-

tion did not offend against Sections 1, 2 and 3 of the Interstate Commerce Act.

V. The order of the Interstate Commerce Commission is free from any error of law in the construction and application of Sections 1, 2 and 3 of the Interstate Commerce Act to the situation presented by the record before the Commission.

VI. In considering the validity of proportional rates or rates in the nature of proportional rates under Sections 2 and 3 of the Interstate Commerce Act, the Interstate Commerce Commission may properly take into account the relative length and nature of the inbound and through service as a basis for a differentiation between such rates and the local rates from the proportional rate point.

VII. Appellees Inland Waterways Corporation and A. L. Mechling have no legal interest or standing which entitles them to bring and maintain this suit.

[fol. 3797] VIII. The carrier defendants were improperly joined in this suit.

IX. The specially-constituted three-judge court was without power to enjoin the carrier defendants from putting into effect the rates in question.

And said appellants hereby designate the following parts of the record considered by them necessary for the consideration of the points upon which they will rely:

All the items set out in defendants' praecipe for transcript of the record except Items 11, 19, 24, 27, 28, 29, 30, 31, and 32.

Dated June , 1942.

Daniel W. Knowlton, Daniel H. Kunkel, Frank H. Cole, Jr., Leo P. Day, Horace L. Walker, George Dyche, Lawrence Chaffee, Bryce L. Hamilton, A. B. Enoch, For Appellants.

[fol. 3798] City of Washington,
District of Columbia, ss.:

Daniel H. Kunkel being duly sworn according to law deposes and says that he is one of the attorneys of record

for the Interstate Commerce Commission, one of the appellants herein, and that he served copies of the above Statement upon all of appellees by depositing same, properly addressed to their respective attorneys of record in the United States mails at Washington, D. C., on the 9th day of July, 1942, in sealed, franked envelopes, said attorneys being:

Walter, Burchmore & Belnap, 2106 Field Building, Chicago, Illinois, For Inland Waterways Corp., Cargill, Inc., Norris Grain Company, Rosenbaum Bros., Santa Fe Elevator Company, and Continental Grain Company. Haskell Donoho, Esq., Department of Agriculture, Washington, D. C., For Secretary of Agriculture. Edward B. Hayes, Esq., 175 West Jackson Blvd., Chicago, Ill., For A. L. Mechling, doing business as A. L. Mechling Barge Line.

Daniel H. Kunkel.

Subscribed and sworn to before me, a Notary Public, in Washington, D. C., this 9th day of July, 1942. Eugenia W. Suter. (Seal.)

[File endorsement omitted.]

[fol. 3799] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLEES' DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD TO BE PRINTED—Filed July 20, 1942

Now comes Cargill, Incorporated, Norris Grain Company, Santa Fe Elevator Corporation, Rosenbaum Brothers, Continental Grain Company, Inland Waterways Corporation, and A. L. Mechling, doing business as A. L. Mechling Barge Line, appellees, to designate the following additional parts of the record considered by them necessary for the consideration of the points upon which appellants have stated they will rely:

In plaintiffs' (appellees') praecipe for transcript of record Item (3), Item (4), Item (5), and that portion of Item

(2) which consists of the supporting affidavit in No. 3725 in the District Court.

Dated July 17, 1942.

Nuel D. Belnap, Luther M. Walter, Edward B. Hayes, Attorneys for Appellees.

Affidavit

County of Cook,
State of Illinois, ss.:

Edward B. Hayes, being first duly sworn, deposes and says that he is one of the attorneys of record for A. L. Mechling, doing business as A. L. Mechling Barge Line, one of the appellees herein, and that he served copies of the above designation upon all of the appellants by depositing same, properly addressed, to their respective attorneys of record, in the United States mails at Chicago, Illinois, on [fol. 3800] the 17th day of July, 1942, in sealed envelopes, first-class postage prepaid, said attorneys being—

Mr. S. R. Brittingham, Jr., Special Assistant to the Attorney General of the United States, Department of Justice, Washington, D. C. Mr. Daniel W. Knowlton, Chief Counsel, Bureau of Law, Interstate Commerce Commission, Washington, D. C. Mr. Daniel H. Kunkel, Attorney, Interstate Commerce Commission, Washington, D. C. Mr. Frank H. Cole, Jr., Com. Atty., The Baltimore & Ohio R. R. Co., 1315 Union Central Life Bldg., Cincinnati, Ohio. Mr. Leo P. Day, Attorney, New York Central System, 525 La Salle Street Station, Chicago, Illinois. Mr. Horace L. Walker, Gen'l Sol'r., Chesapeake & Ohio Railway Co., 823 E. Main Street, Richmond, Virginia. Mr. George F. Dyche, Attorney, Pennsylvania Railroad Company, 625 Union Station, Chicago, Illinois. Mr. Lawrence Chaffee, Gen. Atty., The Chesapeake & Ohio Ry. Co., Richmond, Va. Mr. Bryce L. Hamilton, Attorney, The N. Y. C. & St. L. R. R. Co., 1400 First National Bank Bldg., Chicago, Illinois. Mr. A. B. Enoch, Ass't Gen'l Sol'r., Chicago, Rock Island & Pacific R. R. Co., 1025 La Salle Street Station, Chicago, Illinois. Mr. Haskel Donoho, Senior Attorney, United States Department of Agriculture, Washington, D. C.

Edward B. Hayes.

Subscribed and sworn to before me, a Notary Public, in Chicago, Illinois, this 17th day of July, 1942. Florence M. Sullivan. My commission expires April 23, 1945. (Seal.)

[fol. 3801] In Supreme Court of the United States

Stipulation re Printing Record—Filed October 6, 1942

In amendment to appellant's designation of portions of the record to be printed and appellees' designation of additional portions of the record to be printed, heretofore filed in this cause, it is hereby stipulated by and between counsel for the appellants and counsel for the appellees in the above-entitled cause that:

1. The following exhibits before the Interstate Commerce Commission shall be included in the printed record: 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 19 (1st 8 pages), 38, 45, 59, 61, 63, 67, 68 (1st 3 pages), 69, 96, 98, 99, 70, 71, 72, 74, 75, 76, 77, 81, and the balance of the exhibits before the Commission which were transmitted in original form as introduced in the court below by the clerk of said court to the Clerk of this Court, shall not be printed as part of the record in this cause, but shall be retained as part of said record and may be referred to by the Court and by counsel for the parties in their briefs and arguments in this cause.

[fol. 3802] 2. Appendices A, B, and C of the complaint of Cargill, Incorporated, et al., are identical, respectively, to appendices A, B, and D of the complaint of Inland Waterways Corporation, being, respectively, copies of the Interstate Commerce Commission's order of October 14, 1939, its report of July 31, 1941, and its report and order of December 1, 1941, all in I. & S. Docket No. 4718. Said appendices A, B, and D shall be printed as they appear in the complaint of Inland Waterways Corporation, but appendices A, B, and C of the complaint of Cargill, Incorporated, et al., shall be omitted in printing with appropriate statement of the omission and reference to said appendices in the printed record.

It is understood that by this stipulation none of the parties is foreclosed from later contending that unnecessary parts of the record may have been printed.

Dated October —, 1942.

Bryce L. Hamilton, A. B. Enoch, La Salle St. Station, Chicago, Ill., Attorneys for The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thompson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Frank O. Lowden and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company.

Daniel W. Knowlton, Chief Counsel.

Daniel H. Kunkel, Attorney for Interstate Commerce Commission.

Frank H. Cole, Jr., Leo P. Day, George Dyche. [fol. 3803]Nuel D. Belnap, Luther M. Walter, Edward B. Hayes, Attorneys for appellees.

Lawrence Chaffee, Atorneys for The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Erie Railroad Company, and The Chesapeake and Ohio Railway Company.

[fol. 3803a] [File endorsement omitted.]

[fol. 3804] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 175

ORDER NOTING PROBABLE JURISDICTION—October 12, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Daniel W. Knowlton. File No. 46,669. N. Illinois, D. C. U. S., Term No. 175. The Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, et al., Appellants, vs. Inland Waterways Corporation, Cargill, Incorporated, Norris Grain Company, et al. Filed June 24, 1942. Term No. 175 O. T. 1942.